INSTITVTIONS

Or

Principall grounds of the Lawes and Statutes of England.

Newly and verie truely corrected and amended, with *many new and good additions:* Verie profitable for all sorts *of people to know, lately* augmented and *imprinted.*

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Cum Priuilegio.

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The Prologue of the Author to the *Reader.*

DEmoſthenes the renouned Oratour, defineth Law in this wiſe. The Law (ſaith he) is the thing that all men ought to obey for many cauſes, but eſpecially becauſe law is the inuention, & alſo the gift of God, the decrees of prudent men, the chaſtiſement of offences, and finally the common ſuerty of a Realme, wherby it becommeth all men to liue, which be conuerſant in the ſame, *Chriſippus* alſo, an excellent Philoſopher, thus beginneth his booke of Lawes. The Law is King of all, aſwell diuine as humane affaires, the preſident and controuler of thinges honeſt and diſhoneſt, the Prince, the Captaine and ruler of the iuſt and vniuſt, and it is of ciuill creatures, aſwell the commaunder what they ought to doe, as the forbidder, what they ought not to doe. Theſe authentike ſayings of wiſe men, aſſuredly ought much to inflame vs to the knowledge of thoſe thinges without which we ſhall bee eſteemed as no men but as brute and ſauage beaſtes. Let vs not commit that, that it be ſaid of Engliſh men as it was once ſaid of the men of Athens, that is, that we make very good and profitable lawes, but we vſe them not. Certainly there can be no greater reproch to a cō-

mon weale, then this. One leſſon I would wee learned of the ancient Romaine lawyer named *Celſus*, and that is this: the knowledge of law is not to beare away the words, but the pith and power of them. This is written, becauſe there be many which when good & holeſome Lawes be made, ſeeke not to ſee them executed, & obſerued, but rather how to defraud them and to haue them vnexecuted, which kinde of people after the ſentence of moſt auncient Lawmakers be no leſſe worthy of reprehenſion then they which doe expreſly againſt the law. Now they doe (ſay they) againſt the Law, which doe the thing that the Law forbiddeth. And they defraude a Law or Statute, which the words of the Law ſaued, doe peruert the meaning and ſentence of it.

Let vs then ſo read the Law that wee may beare away the ſence and meaning of them, and ſo fulfill and obſerue the Lawes, that it may appeare that they were not made in vaine. Thus doing wee ſhall pleaſe God, wee ſhall be obedient ſubiects to our Prince. And finally wee ſhall ſeeke our owne weale and ſafety.

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What is Law. Chap. 1.

THe Law is the direction & minis-
stratiō of Iustice. And Iustice
is (as the Emperour Iustinian
saith in his Institutions) a con-
stant and permanent wil to ren-
der vnto euery person his right and duty. The
learning or prudence of law, is a knowledge of
diuine and humane thinges, a science & perfect
notice of equitie & iniquitie, of right or wrong.

Now forasmuch as a great portion of the
prudence, of science of the lawes of this realme
of England consisteth in the perfit knowledge
of estates, which men haue in landes and tene-
ments, we shall first as compendiously, and as
simply and plainly as we can, treate somewhat
of estates.

A diuision of Estates. Chap. 2.

YE shall therefore vnderstand, that whoso-
euer hath any estate in landes or tene-
ments, eyther hee hath in the same onely a
chattell, or a freehold, or an inheritance. If hee Chattell
hath an estate but for terme of certaine yeres, or
at his landlords will, then it is called a chattel,
if for terme of his life, or for any other mans
life, it is called a freehold. And if he hath to him Freehold
and to his heires in fee simple or in taile, then
he hath an estate of inheritaunce. Inheritance

Tenant for terme of yeares. Chap. 3.

TEnaunt for terme of yeares, is he to whom
lands or tenements be let for terme of cer-

taine yeares as is agreed betweene the Landlord and the tenaunt. And when the person to whom such lease is made, doth enter by force of the said lease, and is in possession of the same: then he is called a tenant for terme of yeares.

Rent reserued

And here ye shall note, that if the lessour that made the lease, hath reserued vnto him a yearely rent vpon the said lease, as it is accustomably vsed to be done, if the rent be behinde & vnpaid, it shalbe in his election, either to enter and distraine for the rent, or to bring an action of

Action of debt

debt against the tenant for the arrerages of the same. But in this case it is requisite, that the

A good plee

lessour were seased of the landes or tenements at the time of the making of the lease, for otherwise it shall be a good plee in the action of debt for the tenaunt, to say the lessour had nothing in the lands & tenements at the time of the Lease made, except the Lease were made by deed indented, for then the plee shall not lie in the Tenaunts mouth to plead.

Liuerie of season needeth not in a lease for terme of yeares

And it is to be knowen, that in a Lease for terme of yeares, whether it be by deed or without deed, there need no liuerie of season to bee made to the lessee, but he may enter when he wil by vertue of his Lease without any further ceremony of the law.

And if a man leaseth landes for terme of yeares, though the lessour chaunceth to die before the lessee doth enter, yet he may enter well enough. Otherwise it is where liuerie of season is to be made, as in freeholds & inheritãces.

Waste

Also if the tenaunt for yeres doth waste, the landlord may bring an action of waste against him,

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him, and ſhall recouer the place waſted, and his treble damages.

Alſo if a leaſe for yeres be made of two ſeuerall things, and after the one is recouered, the leſſee ſhall hold the other, and the rent or ferme ſhall be apportioned. M. 12. H. 8.

Alſo if the tenaunt for yeares graunteth a greater eſtate in the land, then he hath himſelfe, wherby he conueyeth the fee ſimple to himſelfe, he ſhall forfait his leaſe or terme. Forfaiture.

Tenant at will. Chap 2.

TEnant at will, is he, to whom landes or tenements be leaſed to haue and to hold the ſame at the will of the leſſour. And in this caſe the leſſour may put out his tenant at what time him liſteth. But yet neuertheleſſe, if the tenaunt haue ſowed the grounds with Corne, in this caſe if the leſſour will enter and put out his tenant before Harueſt, the law will giue him free comming and going to reape and carry his Corne away, without any puniſhment or damages to be ſuſtayned for his ſo doing, becauſe he knew not at what time the leſſour would enter. But otherwiſe it is of tenant for terme of certaine yeres, for if he ſoweth the ground, and his terme of his leaſe be come out and expyre before the corne be ripe, in this caſe the leſſour, or he in the reuerſion may enter and take the corne, becauſe it was the folly of the tenant to ſow the ground, knowing the end of his terme.

In likewiſe, tenant at will ſhall haue free comming & going after the time of the leſſours

entrie, to carie away his houshold stuffe & goods for a reasonable space.

Ye shal also vnderstand, that he that maketh a lease at will, may reserue an annuall or yerely rent, in which case if the rent be behind, he may enter very well and distraine the goods and chattels of the tenant, or at his election he may bring an action of Det against him.

Distres, or action of Det.

Also it is to be knowen, that tenant at will of a house or tenement, is not bound by the order of the law to sustaine and repaire the houses that be decayed and ruinous, as is the tenant for yeares, and therefore no action of wast lieth against him: yet if he will doe wilfull wast, as if he plucketh downe the houses, or cutteth downe the trees: it hath been thought by the sages of the law, that the lessour may bring an action of Trespasse against him, and shall recouer his losses thereby sustayned.

Wast.

Trespasse.

And if such a tenant die, and his heire enter, in that case the lessour may haue an action of Trespasse against the heire for his entrie.

Tenant by Copie of Court roll. Chap. 5.

There is an other kind of tenant at will, which is called Tenant by Copie of the Court Rolles. And this is when a man is seised of a mannour, within which it hath been vsed time out of minde, that the tenants within the boundes and precinct of the said mannour, haue holden lands & tenements to them and to their heyres in fee simple, fee tayle, or for terme of life, at the will of the Lord, according to the custome of the manour. And such a tenant

tenant cannot alien or sell his land by his deed, for if he doe, the land or tenement that is so alienated and sold, is forfait into the Lord hands, but if he will alien his copyhold land to another, he must according to the custome, come into the Lords Court, and there surrender it into the Lords hand, to the behooke and vse of him that shall haue the estate. The forme of which surrender is commonly vsed to be thus. Surrender.

The forme of a surrender.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem curia vnum mesuagium, &c. in manus domini, ad vsum C. de D. & heredum suorum, vel heredum de corpore &c. Et super hoc venit prædictus C. de D. & cripit de domino in eadem curia mesuagium prædictum: Habendum & tenendum sibi, &c. ad voluntatem domini secundum consuetudinē manerij, faciend' inde redditus, seruitia, & consuetudines inde prius debitas & consuetas, &c. Et dat domino pro fine. &c. Et fecit domino fidelitatem.

These as I said be called Tenants by Copy of Court roll, because they haue none other euidence to shew concerning their lands, saue only the copies of the rols of their Lords court.

Neither can these tenants sue or be sued for such landes in the Kings Court, by writ or otherwise. But if they will in any wise implead or sue others for such copie lands, they must do it by way of plaint in the Lords Court after this forme.

The forme of the plaint.

A. de B. queritur versus C. de D. de placito terræ, videlicet, de vno mesuagio, 40. acris terræ, 4. acris prati, & c. cum pertinēcijs, & facit protestationē sequi quærelam istā in natura breuis dñi

Regis

Regis assisę mortis antecessoris ad communem legem vol' &c. Plegij de prosequendo, F. O. &c. Now although some such tenants haue an inheritance according to the custome of that manour, yet in verie deede they are but tenants at the will of the Lord. For as some men thinke, if the Lord will expel them, and put them forth, they haue no remedy at all, but to sue vnto their Lord by way of petition, desiring him to bee good and gracious Lord vnto them. For if they might haue any remedie by the law, then should they not be called (say they) tenants at the will of the Lord after the custome of the manour. But other men of no lesse learning and prudence, haue been of contrarie iudgement, as Lord Brian chiefe Iustice, in the time of king Edward the fourth, whose opinion was alwaies that if such a tenaunt by the custome (paying his seruices) be elected and put forth by his Lord without cause reasonable, he may verie well bring and maintaine an action of trespasse against his Lord at the common law, as appeareth termino Hillarij, añ 21. E. 4. Also Lord Danby chiefe Iustice likewise, was of the same iudgement, as appeareth termino Mich. an. 7. E. 4. where he saith, that the tenant by the Custome is aswell inheritable to haue his land after the custome, as is he that hath a freehold at the common law: but the determination of this question, I remit to my great Maisters, which can loose the knots & ambiguities of the law. For asmuch as yet still of this matter, Causidici certant, & adhuc sub Iudice lis est.

Action of Trespasse.

Also yee shall vnderstand, that the vsage of some

ſome manours is, when the tenaunt wil ſurrender his land to the vſe of an other, that hee ſhall take a wand or a rod in his hand, and deliuer it to the ſteward of the court, and the ſteward ſhal deliuer the ſame wand in name of ſeiſin, to him that ſhall take the land, and ſuch a tenaunt is called tenaunt by the verge. Diuers other cuſtomes there be of ſurrendring of Copie holde landes, which here for tediouſnes I will omit. And foraſmuch as tenaunts by cuſtome of the Manour, haue by the courſe of the commõ law no freehold: therefore they be called tenaunts of baſe tenure. Baſe tenure

Alſo if ſuch a tenaunt letteth to ferme his copie hold land for longer time then a twelue moneth and a day without the Lordes licence, it is a forfeiture of his land to his Lord.

And know yee that if this tenaunt fell anie timber that groweth vpon the land but onely for the reparation of the ſame, this is waſte and a forfeiture of his Copie hold.

Hitherto haue I treated of the firſt member of our diuiſion, that is to wit, of chattels, for as I ſaid, all leaſes for terme of yeres, and at will be accounted in the law, but as chattels, and be comprized vnder that name, ſaue that theſe bee called chattels reals, where as Kine, Oxen, Horſes, money, plate, corne, and ſuch like bee called chattels perſonals. Now we will proceed to the explanation of the ſecond member, that is to ſay, of Freeholdes. Chattell reall and perſonall.

Free

FReeholds or franke tenements a man may haue in sundrie wise, for either hee is seised for terme of his owne life, or for terme of another mans life. If hee be seised for terme of his owne life, either he hath gotten such estate by way of purchase, or els the law hath instituted him thereunto. I call it by purchase, whether hee commeth vnto it by his owne bargayning & procurement, or by the gift of his frend, and I call it by the operation of instituting of the Law, when a man marrieth a woman that is an inheritrix, and hath issue by her, and shee dyeth, now shall hee haue the landes during his life, by course of the law, and shall be called tenant by the curtesie of England.

Tenant by the curtesie

Tenant in dower

In likewise, if a man be seased in fee simple, or fee tayle of lands, and taketh a wife, and he dyeth, the law giueth vnto the wife the thirde part of her husbands landes for terme of life, and she shall be called tenaunt in dower.

Tenant for terme of life. Chap. 7.

TEnant for terme of life, is he that holdeth lands or tenements for terme of his own life, or for terme of an others life. Howbeit the most frequent and common manner of speaking is to call him that hath an estate for terme of his owne life tenant for life, and him that hath an estate for terme of an others life, tenant for terme dauter vie, that is to say, tenant for terme of an others life.

Ye shall note that like as he that maketh the leasse is called the lessour, and hee to whom the leasse

leaſſe is made, is called the leſſee, ſo he that maketh a feoffement is called the feoffor, and he to whom the feoffement is made the feoffe.

Alſo if the tenant for terme of life, or tenant for terme of an other mans life doe waſte, the leſſor or he in the reuerſion, ſhall maintaine very wel an action of waſte againſt him, and ſhal by the ſame recouer treble damages.

Finally ye ſhall vnderſtand that by an act of Parliament made in the xxvii. yeare of our Soueraigne Lorde King Henry the eight, it is enacted that no freehold, nor eſtate of inheritance ſhall paſſe nor take effect by reaſon of any bargaine and ſale, except that ſame bee made by writing indented, ſealed, and enrolled in one of the Kinges Maieſties Courtes at Weſtminſter, or els within the County where the land doth lye, before the cuſtos Rotulorum, and two Juſtices of Peace, and the Clerke of the Peace of the ſame Countie or two of them at leaſt, of which the ſaid Clerke ſhall be one, & that ſuch inrollement be made, within ſixe monethes after the date of ſuch writing. And for the inrolment of euery ſuch writing where the land compriſed therein, is not aboue the yerely value of fortie ſhillinges, they ſhall take two ſhillings, that is, twelue pence to the Juſtices, and twelue pence to the clerke. And if the land be aboue the yerely value of xl. s. then they ſhall take v. s. that is iij. s. and vi. d. to the Juſtices, and iij. s. vi. d. to the Clerke, which ſhall inroll and ingroſſe ſufficiently in Parchment ſuch deedes and writinges, and at euerie yeres end he ſhall deliuer the ſame to the cuſtos Rotulorum

Waſte.

Rotulorum of the ſame county, to remain in his cuſtodie among other recoꝛds of the ſame coũty ſo that the parties reſoꝛting thither may ſee them. Pꝛouided, that this extend not to any tenements oꝛ hereditaments lying within any citie oꝛ towne coꝛpoꝛate, wherein the Maioꝛs, Recoꝛders, oꝛ other officers haue authoꝛitie, oꝛ haue lawfully vſed to enroll ante euidences oꝛ wꝛitings within their pꝛecinct.

Tenaunt by the curteſie. Chap. 8.

TEnaunt by the curteſie of England, is hee that hath maried a wife inherited, & hath had iſſue by her, & ſhee is dead, in this caſe the law of England permitteth and ſuffereth the huſband of ſuch wife to receiue & keepe ſtill al his wiues land that ſhe had, either in fee ſimple oꝛ fee taile, ſo long as he liueth. And this is by the curteſie, & vꝛbanity of England, foꝛ this thing is vſed in none other country noꝛ region. But in this it is required that the child be vitall, that is to ſay, be boꝛne and bꝛought fooꝛth into this woꝛld aliue, and therfoꝛe the common ſaying is, and hath beene, that vnleſſe the child be heard cry, the father ſhall not be tenaunt by the curteſie, foꝛ the onely pꝛoofe and argument of life in an infant boꝛne, is the vagite and cꝛying. Ye ſhall furthermoꝛe vnderſtand, that vnleſſe the huſband be in actuall & reall poſſeſſion of his wiues landes, and ſeiſed of them in her right, he ſhall not be tenaunt by the curteſie after her death. And therefoꝛe if landes diſcend to a mans wife, ſo that ſhe is tenant in the law, & to euery mans actions, yet if the huſbãd haue

not

not made an actuall entrie during couerture and matrimonie betweene them, he ſhall not be tenaunt by the curteſie, for it ſhall be reputed and iudged his folly and negligence that he would not enter in her life time.

Otherwiſe it is of aduowſons, rents, commons, and ſuch other thinges, which forthwith when they diſcend, be in man, or in a woman without any entrie or further ceremony of law.

Note, that if tenant by the curteſie of England will ſuffer, or make any waſt in the lands or tenements that he ſo holdeth, he is puniſhable therefore, by action of waſt brought by him in the reuerſion.

Alſo it is to be knowen, that of things that be in ſuſpence, a man ſhall not be tenant by the curteſie, and therefore if a man be tenant in fee ſimple of certaine land, & doth intermary with a woman that is the Seigniorelle or Lady of the ſame, and hath iſſue by her, & ſhee dieth, yet ſhall he not be tenant by the curteſie of the Lordſhip or ſeigniory, becauſe himſelfe is tenant of the land, & therfore the Lordſhip is ſuſpended for the time, for a man cannot be both Lord & tenāt of one thing: but if he had not been tenant of land, he ſhould haue had the Lordſhip after the death of his wife, by the curteſie of England very well.

Alſo note, that of a right, onely a man ſhall not be tenant by the curteſie, as if a woman ſole ſeiſed in fee of lands or tenements, be diſſeiſed, and after take a huſband, and they haue iſſue, and ſhe die before any reentrie made, the huſband ſhall not be tenant by the curteſie.

Note

Note further, that of a reuersion, a man shall not be tenant by the curtesie: as if a woman sole seised of lād in fee, make a lease to S. for terme of life, after taketh a husband, & they haue issue, and she die, liuing the lessee for terme of life, the husband shall not be tenant by the curtesie.

Of Tenant in Dower. Chap. 9.

TEnant in Dower, is she that hath been married to an husband that was during the matrimonie betweene them, seised of landes or tenements in fee simple, or fee taile, which is now dead, & she seised of the third part of her husbands said lands for terme of her life: For by the common Law of the land, if the husband be at any time during the couerture seised lawfully, whether it be by purchase, or by discēt, either in fee, or in fee taile, & die, his wife shal be indowed by the course of the common law of the third foote. And in some places by an auncient custome, she shall be indowed of the moitie, yea and though the husband were neuer seised actually during the couerture. Yet if the lands be cast vpon him by the law, so that the law calleth him tenant to euery mans action, it sufficeth the woman to demaund her dower: for it were vnreasonable that the negligēce & slacknesse of entring of ꝑ husband, should hurt the wiues title.

Dower at the common law.

Dower by custome.

Otherwise it is as it is said before of tenant by the curtesie, for if lands discend to a woman couert, and the husband for slouthfulnesse or negligēce, doth not enter in his wiues life, he shal not be tenant by the curtesy, for by all lawes the wife oweth obedience and subiection to her husband

Tenant by the curtesie.

husband, and therefore she cannot compel him to enter, but when lands discend to the wife, the husband onely hath power to enter at his pleasure.

And ye shall vnderstand, that vnlesse the wife be aboue the age of nine yeres at the time of her husbands death, she shall not be endowed by the common Law.

But it is to be knowen, that a woman may by diuers wayes estoppe and preiudice her selfe of her dower: as if she commit any crime, for which she is attainted of treason, murder, or felonie, she shall haue in this case no dower, notwithstanding she hath obtayned her pardon. A woman shal haue no dower

Also, if after the death of her husband she taketh a lease for terme of life, of the same lands whereof she is indowable, she loseth her dower of the same. Moreouer if she depart from her husband, and lyeth in adulterie with an other man, and is not reconciled againe to her husband without coherstion of the Ecclesiasticall power, she loseth her dower after her husbands death. She shal be also barred of her dower, if she will withhold from the heire, the charters and euidence, concerning that land whereof she asketh dower. But none other saue the heire, can withhold her dower for this cause. No dower.

It ought not to be vnknowen also, of what things she may demaund dower, and of what things not. Of lands, meiuages, aduowsons, rent charge, rēt seruices, or seignories in grosse, or otherwise of villaines, of commons certain, of estouers certain, of milles, & offices, or of the profit of them, she is dowable. But of commons

and eſtouers ſans number, alſo of annuities, of homages, of things of pleaſure, as of ſeruice, of payment of roſes, and ſemblable, ſhe ſhal not be indowed.

Dowment ex aſſenſu patris.

There be yet two other kinds of dower, the one is called dowment ex aſſenſu patris, that is to ſay, by the aſſent of the father, and the other is called dowment de la plus beale part, that is to ſay, of the fayreſt part.

Dowment ex aſſenſu patris, is when the father is ſeiſed of lands in fee ſimple, & his ſon which is heire apparant, indoweth his wife at ꝯ Church doze, whē he is eſpouſed of parcel of his fathers lands, with the aſſent of his father in writing, teſtifying the ſame aſſent, if in this caſe her huſband die, ſhe may forthwith enter into the land ſo aſſigned vnto her, without further procurement of proceſſe of law, although the father of her ſaid huſband be yet aliue, & in actuall poſſeſſion of the land. But if ſhe thus do, and take her to this indowment at the Church doze, ſhe cannot haue her dower. Alſo by the Common law of the third part of all her huſbands lands, or any part or parcell of them, how be it, if ſhe wil refuſe this aſſignemēt made vnto her at the Church doze, & demaund dower at the common law, ſhe may ſo doe very well. A man may alſo indow his wife at the time of ꝯ eſpouſals of his owne lands, the which he hath by his own poſſeſſion, and that dower is called dower ad oſtium Eccleſię, that is to ſay, at the Church daze.

Dowment ad oſtiū eccleſię

Dowment de la plus beale part.

Dowment de la plus beale part, that is to ſay, dowment of the faireſt part ſhal be in this caſe, when a man is ſeiſed of lands which he holdeth of

of another man by knights ſeruice, and of other lands which he of ſocage tenure, and hath iſſue, which is within the age of xiiii. yeres and die, and the Lord of whom the landes is holden by knights ſeruice entreth into the land holden of him, & the mother of the childe entreth into the ſocage tenure, as gardaine in ſocage, if in this caſe the woman will bring a Writ of dower againſt the Lord which is gardain in chiualry, he may plead the ſpeciall matter, and ſhew how ſhe is gardaine in ſocage, & hath ſo much lande, and thereupon pray the Court that ſhe may be ſuffered to endow her ſelfe of ſo much land, being in her owne cuſtodie, as amounteth to the third part of the whole landes.

And then the iudgement ſhalbe that the gardeine in chiualrie ſhall retaine the land holden of him quite from the woman, during the nonage of the ward. After which iudgement and ſentence giuen ſhe may goe, & in the preſence of her neighbours, endow her ſelfe of the beſt part of that which is in her cuſtodie, amounting to the third part of the whole, and then is ſhe called tenant in dower de la plus beale.

Finally, ye ſhall vnderſtand that by a Statute made the xxviii. yere of our moſt dread Soueraigne Lord, King Henry the eight, it is enacted, that where diuers perſons haue eſtates made to them and to their Wiues, and to the heires of the huſband, or to the huſband and Wife, and the heires of their two bodies begotten, or the heires of one of their bodies or for terme of both or one of their liues, or anie other perſons and their heires, to the vſe of An. 27. H. 8.

the husband & wife, or to the wife alone for her ioynture: in euery such case the woman shal not be suffered to demaund any dowrie of the residue of her husbands lands of whom shee hath ioynture against any tenant of the land. But in case she hath no such ioynter, then may shee demaund her dowrie after the course of the common law. Prouided neuertheless, that if such women be lawfully expulsed from their ioynter, or any part therof, without fraud or couin, then shall they be endowed of the residue of their husbands lands, for as much as the lands shal amount vnto, out of which they were so expulsed and put forth.

Prouided also, that if lands or tenements be assured to any woman after mariage for terme of life or otherwise in ioynture (except it bee by act of parliament) & the wife ouerliue her husband, in whose time the ioynture was made, in this case ꝑ wife may refuse the lãds so appointed vnto her in ioynture, and haue her dower at the common law, of such landes as her husband was seised of, at any time during the couerture.

Also, if the husband committeth treason, murder, or felony, for which he is attainted, the wife shall not haue her dower.

And note that if the husband enter into religion, and is professed, the heire shall enter into the land, but the wife getteth no dower till the husband dieth, M. 32. E. 2.

And likewise, if a man seised of land taketh a wife that is an alien borne, and dieth, she shall not be endowed, except shee be made denizin by act of parliament. T. 3. H. 6. And note ꝑ where

the

the wife bringeth a writ of dower, & recouereth her right, ſhee ſhall recouer no damages, but where her huſband died ſeaſed of the lands recouered.

A diuiſion of inheritance Chap. 10.

HEtherto haue I ſpoke of freeholds, now it remaineth to treat of inheritances, not the inheritaunces that be no freeholdes, for they be freeholds alſo, but the other eſtates of which I haue hetherto treated, be only freeholdes and of no higher nature, whereas an eſtate of inheritance, although it be a freeholde indeed, yet it is not to be called by name, ſith it is after more excellent & greater eſtate. But ye ſhall vnderſtand, that of inheritances ſome be of more amplitude & excellent then other ſome be, as that inheritance which is pure ſimple, & without limitation of what heires, which kinde of inheritance is called fee ſimple. But when I make a limitation of what heirs, then it is called fee tayle, and of which alſo be two ſorts, as hereafter more at large ſhall be declared. Now therefore the nature of fee ſimple is ſet forth with our accuſtomed compendiouſnes. Damages

Of fee ſimple. Chap. 11.

FEe ſimple is (as I ſaide) the moſt ample and large inheritaunce, that can be in this realme deuiſed or inuented, it is that which a man hath to him and his heires, ſimple without any further limitation, for whether they be of his owne body begotten or not, ſo that they be the next of his kinne, and within the degrees it ſufficeth. Fee ſimple

So then tenant in fee simple is he that hath lands or tenements, whether it be by purchase or by discent, to him & to his heirs & assigns for euer. For if a mā wil purchase lands in fee simple, he must needs haue these words his heires in his purchase, for these be the only words that make ỹ estate of inheritance. Therfore if lands be giuen to a man for euer, & no mentiō be made of his heirs: hee hath an estate but for terme of his life, because these words his heirs do lacke.

Yet neuertheless, if a man by his testament doth deuise landes to an other in such place or case where the custome or law wil serue, so to do though hee maketh no mention of heires, but saith that he bequeth to such a person such lāds to haue and to holde to him and to his assignes for euermore, here an estate of inheritance doth passe, for in testaments the will & intent of the testator is to be pondered and not the formall and prescript words of the law.

Also these terms in the law, frank mariage & frāk almoign, that is to say free mariage & free almes do include in thē wordes of inheritance.

And therfore if I giue lands to a man with my daughter in franke mariage without further addition or mention of heires, this is an estate of inheritance, as shal be hereafter declared more plentiously. So likewise it is of lands giuen to an house Ecclesiasticall in pure and franke almes. Moreouer, if land be giuen to a man and to his blood, or vnto him and to his seed, he hath in both cases an estate of inheritance for in the last he hath a fee tayle, & in the other a fee simple. For this word seed, & blood

and

and such like do imply words of inheritance.

Also if lands be given to a man and to his heires males, or females, he hath by this gift a fee simple, because it is not expressed of what bodie the issue shall come.

But now it is to be seene who be said a mans heires in the law: ye shal therfore know that my brother or sister by the halfe blood, that is to wit by the fathers side, & not by the mothers, or contrariwise by the mothers side, & not by the fathers, shall never be mine heire, nor none that come of them. Neither my bastard can be mine heire, nor mine own natural father nor mother, nor grandfather, nor grandmother can be mine heire. For it is a principle & ground of the law, that inheritance may lineally discend, but ascend it may not. And therfore if I haue lands in fee simple, and die without issue of my body, my father cannot be mine heire, but my fathers brother or sister shall, and then if my uncle or aunt die seised without issue, my father shall haue the lands as heire to mine uncle, & not as heire to me, for that cannot be. But it may go from me to mine uncle or aunt well enough, for that is not called a lineal ascention, but a collateral discent.

The halfe bloud.

A Bastard shal be no heire.

A ground of the law.

Also ye shall understand, that a lineall discent is when the discent is conueyed in the same line of the whole bloud, as grandfather, father, and sonne, and so downe. And collaterall discent is of an other branch, from aboue of the whole bloud, as the grandfathers brother, or fathers brother, and so discending.

Lineall and collaterall discent.

And ye shall note, that by the common law of this Realme, the eldest son shall haue the whole

inheritaner, and after him if he haue no issue the second sonne, & so forth. And if I haue no sons but daughters, then shall all the daughters together inherit, which be called coparceners, but if I haue no issue at all, neither sons ne daughters, then shal my eldest brother in heritage succeede me, but if I haue no brother, then my sisters if I haue any, if not, my uncle by my fathers side, if the lands be of mine own purchase, or if they discended vnto me from my father. And to be short, if there be none in life of my fathers side, the purchased land shall go to my mothers side, & if there can be found no heire, neither by my fathers side, nor yet by my mothers, then shal it escheat, as they call it, to the Lord of whō it was holden, for euery land must needs be holden of some Lord, as shall be hereafter shewed. But if lands discend vnto me by my mothers side, then if I faile of issue, the lands shal discend only to my heires of my mothers side, and neuer to mine heires of my fathers side: as on the contrarie side, if I haue lands, or any tenements by discent from my father, or his bloud, they shall neuer discend to my heires by my mothers side.

Coparteners.

Escheat.

Diuersitie.

And thus ye see a great difference in this behalfe, betweene purchased landes, and landes which discend from an auncestour.

If there be three sons, and the middle sonne purchase lands and die without issue, the eldest shall haue the lands, and not the yongest.

A ground of the law.

Also it is a principle in our law, that none can be mine heire of landes that I holde in fee simple, vnlesse he be mine heire by the whole bloud, that is to say, both by father and mother, for

for if a man hath iſſue two or three ſons by ſundry wiues, and the eldeſt purchaſeth lands in fee & dyeth without iſſue, his halfe brethren, I meane thoſe that be not his brethren both by the fathers ſide, and mothers ſide, ſhal not haue the land, but it ſhall go to his vncle. Likewiſe if a man hath by his firſt wife a ſonne & a daughter, and by his ſecond wife an other ſonne, and the ſonne by the firſt wife purchaſeth lands in fee ſimple, & dieth without iſſue, the ſiſter germaine, that is to ſay, both by fathers ſide and mothers, ſhal haue the lands by diſcēt as heire to her brother, & not ỹ ponger brother, for aſmuch as the yōger brother cannot in this caſe be heire to his elder brother, becauſe he is no brother germain vnto him. Otherwiſe it is of lāds or other hereditements intailed, as ſhalbe hereafter ſpecified.

Alſo if a man be ſeiſed of lands in fee ſimple, and hath iſſue a ſonne & a daughter by one wife, and after the death of his firſt wife a ſonne by an other wife, and dieth, and the eldeſt ſonne entreth into the lands, and after he dieth without lawfull iſſue of his body, the daughter ſhal haue the lands, and not the pongeſt ſonne, and yet the pongeſt ſonne is heire to his father, but he is not ſo vnto his brother. But if in this caſe the eldeſt ſonne hath not entred after the death of his father, but had dyed before any entrie made by him, then ſhall not the ſiſter germaine enter, but the ponger brother is heire to his father, becauſe the eldeſt brother was neuer in actuall poſſeſſion, which is requiſite to the perſon that claymeth to be heire collaterally.

But to the lineall heires, it ſufficeth that the

auncestour should haue been heire, if he had issued, I meane as thus. A man seised of lands and hath issue a sonne and a daughter by one wife, and afterward a sonne by an other, he dyeth, and after his death the eldest sonne entreth not but dyeth without issue before he can make actuall entrie, here in this case his sister shall not haue the lands as heire to her brother, because her brother was not in actuall possession, but the ponger brother shall haue them as heire to his father, yet if the eldest sonne in that case had left behind him issue of his body, whether it had been sonne or daughter, this issue notwithstanding that the Father of the issue was neuer possessed either actually or in the law, shal haue the lands, & shall conuey his discent from his father, the cause hereof is this, that the son or daughter is lineall heire, where as the brother, sister, uncle, aunt, &c. be heires collaterall, and so ye shall obserue a diuersitie.

Diuersitie.

I call an actuall possession, when a man entreth in deed into lands, which be to him discended, but a possession in law is called when lands be discended to a person, & he hath not yet really & actually entred into them. For notwithstanding that he is not in actuall possession, yet he is possessed in the law, that is to say, in the eye and consideration of the law he is deemed to be possessed, forasmuch as he is tenant for euery mans action that will sue for the said lands, or else assuredly there should insue an intollerable inconuenience, as we shal more copiously open in another place. Ye shal furthermore vnderstand, that this word inheritance is not onely to be accommodate

Hæreditas quid sit.

modate and applyed to that which commeth by diſcent or ſucceſſion from a mans auncеſtors or predeceſſors, but alſo to euery purchaſe in fee ſimple or fee tayle.

And note that a man can haue no larger or greater eſtate then fee ſimple.

Of Fee tayle. Chap. 12.

YE ſhall vnderſtand that before a certaine ſtatute called the ſtatute of Weſt. ſecond there was no eſtate tayle but all was fee ſimple, either purely, that is to ſay without condition, or at the leaſt way condicionally as appeareth by the preteence of the ſaid eſtatute, but now ſithence the promulgating of the eſtatute, diuers formes of eſtates tayle haue riſen. VVeſtminſt. 2. Chap. 1. Deuiſion.

Fee taile is when it is preſcribed and limitted in the gift, what ſort of heires and by whom engendred ſhall inherite.

As for example, I giue lands to a man and to his heires & goe no further, this is a fee ſimple: but if I make a limitation, and adde of his bodie begotten, now it is a fee taile, that is to ſay, a fee or inheritance limitted, preſcribed, determinate or aſſigned.

So that if I giue landes to a man & to his heires, he hath fee ſimple, but if I giue landes to him & to his heires of his bodie lawfullie begotten, he hath but a fee tayle, forasmuch as I appoint, limit, preſcribe, and expreſſe what heirs they ſhalbe, & for lacke of ſuch heirs the gift ſhal be expired and worne out, and the lands ſhalbe reuerted againe to the giuer or his heires.

But ye muſt obſerue and note that there be two kindes of fee tayle. There is a generall

tayle

tayle and there is a ſpeciall tayle.

Fee tayle generall is where landes be giuen to a man and to his heires of his body begotten without any mentioning & expreſſing by what woman they are begotten.

General taile

And therfore if a man be tenant in the general taile of lands, & taketh a wife and hath iſſue by her, and ſhe dieth, and afterward hee taketh another wife, of whom hee hath alſo other iſſue by her, eyther of theſe iſſues is inheritable to this land intailed. But if I expreſſe in the gift by what woman the heires ſhalbe procreated & ingendred, then it is an eſpecial taile, as for example to make the thing plain, if landes be giue to a man and to his heires of his body lawfully begotten by Margaret his wife, this is an eſpeciall taile, for the iſſue of him begotten by another woman, ſhal neuer inherite by force & vertue of the taile. Likewiſe it is if landes be giuen to a woman & to the heirs of her body lawfully begotten (& ſhew not by what mā) this is a generall taile, but if I go forward & ſay by ſuch a man her husband, then it is an eſpeciall taile.

Eſpecial taile

Alſo if I giue lands to a man & to his wife, and to the heires of their two bodies lawfullie begotten: this is an eſpeciall taile, aſwell in the husband as in the wife.

Franke mariage

Semblable it is, if a man giueth landes to another man with his daughter, or kinſwoman in franke mariage, this word (franke mariage) impleth an eſtate taile eſpecial, and in this caſe as well the man as the woman hath an eſtate in the ſpeciall tayle.

But if I giue lands to a man and to ſuch a woman

woman, & to his heirs that he hath begot of hir, here the woman hath an estate but for terme of her life, and the husband an estate in the special taile. And likewise it is in the womans behalfe, as if I giue lands to a man & to his wife, & to her heires of her body by her said husband engendred, he hath an estate but for terme of life, & she an estate in the spectall taile. But in both cases, if I had said to the heires, & not to his or her heirs, then should either of thē haue had an estate in ꝑ special taile, because this word heirs is as well referred to the one as to the other.

Discente by heires males

Ye shall also vnderstand, that if lands be giuen to a man, and to the heirs males of his bodie, this is an estate tayle, and in this case, the heire female shall neuer inherite.

Also, if a man hath issue and dieth, and lands be giuen to him and to his heires of his bodie begotten, this is a good estate tayle, although the Father were dead at the time of the gift. Finally it is to be noted, that of lands which a man hath in fee simple the possession of the brother, shall cause the sister germaine, that is to say, the sister both by the Fathers side and mothers to inherite, and in this case the brother by the halfe blood shall not inherite, as heretofore was said, but of lands which be entailed otherwise it is. Therefore if a man be seised of lands in the generall tayle, and hath issue by his first wife a sonne and a daughter, and also a sonne afterward by another wife, and dieth, and the eldest sonne entreth into the landes, and after dieth, the sister germaine to the eldest sonne shal not haue the lands, but the younger brother of

the

the halfe blood, because whosoeuer shall inherite land or any other hereditaments in tayle must clayme them as next and immediate heire not to him that dieth last seised of the lands, but to him to whom the lands were first giuen, vnto whom in the case before remembred, is the sonne and heire and not the daughter.

Diuersitie. Thus yee shall marke a great diuersitie betweene the forme of succession in the landes of fee simple, and the forme in fee tayle.

Tenant after possibilitie of issue extinct. Chap 13.

WHen lands, tenements or other hereditaments, be giuē to a man & to his wife, & to the heires of their two bodies lawfully begotten, if in this case either of thē chance to die before they haue issue between thē, he or she ỳ ouerliueth, is stil tenant in taile, but wout possibilitie of any issue ỳ can be heire to these lands or hereditamēts thus intailed, & for this cause he or she thus ouerliuing, is called tenant in taile after possibily of issue extinct, for in such a tenāt is all possibility of issue that may be inheritable to these lands by force of the gift in tail vtterly extinct or quenched, & by his or her death the estate tail shal expire, cease, & be abolished for euer, & shall reuert & turne againe to the giuer or donour from whence it came.

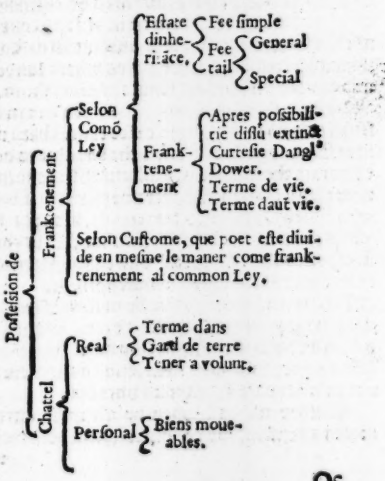
Dispunishable of waste.

Yet forasmuch as the tenaunt after possibilitie of issue, had once an inheritance in him, hee shall not bee punished by an action of Waste, though he maketh neuer so much Waste in the lands and tenements, whereas yet in effect hee is but a tenant for terme of life. But if this tenant

nant doth alien, in fee, ſuch lands, he in the reuerſion may enter for the forfaiture. Forfaiture.

And this for eſtates at this preſent time ſhall ſuffice. But to the intent that ye may the more eaſely comprehend all the members of the deuiſion of poſſeſſions and eſtates which men may haue in lands, tenements, and other hereditaments, it ſhall not be euill done to ſet forth as it were in a table before your eyes the deuiſion thereof, which is this.

A figure of the diuiſion of Poſſeſſions.



Of

Of Parceners or other Coheires. Chap. 14.

HItherunto I haue made a compendious and short declaration of estates of all sortes. But where I said, that among sisters there is no prerogatiue or preheminence concerning the inheriting of their auncestours lands, but that they shall be altogether inheritours, and make as it were but one heire, it is expedient to make a further declaratton and processe in this behalfe, and to shew how and in what maner this partition shall be made.

Diuision of Parceners at the Common law, and parceners by custome.

But ye shall vnderstand, that there be besides Parceners at the Common law, which be onely sisters, also Parceners by custome, which is amongst brothers contrary to ỹ course of the Common law, & this custome is in some places of Kent, & in other places where landes and tenements be of the tenure of Gauelkind.

Writ De Partitione facienda.

Yee shall therefore know, that when a man is seised of land in fee simple, or fee taile, & hath no issue but daughters, & die, & the daughters doe enter into the lands thus discended vnto them, now they be called parceners or coheires, & by a writ called De Partitione facienda, brought by one of them against the others, they shal be constrained by the law to suffer an egall partition to be made of the lands betweene them.

Now partition may be made in sundry wates. One way is, when they themselues doe make partition betweene them of the whole heritage, and do agree vnto the same, and do enter euery one into her part so allotted vnto her.

Partition in diuers maners.

An other way is, when by all their agreements & consent, one common friend doth make the

the partition, In which case the eldest sister shal haue the first election, & after her the second sister, & so forth. But if they agree that the eldest sister shall make the partition, & she maketh it, thē the eldest shall not chuse first, but shall suffer all her sisters to chuse before her, as it is thought.

There is also an other forme of partition, which is egally to deuide the lands into so many parts as there be coheires or parceners, & to write euery part so diuided in a seuerall scroule of paper, & so put the said scroules in a bonet, or to inclose them seuerally in balls of waxe, & then the eldest sister to chuse which ball she will, or to put her hand into the bonnet, & to take a scroul, and to hold her to her chaunce & allotment, and so consequently euery sister after other.

And ye shall note, that partition by agreement may aswell be made by nude & bare words without writing, as by writing. Nota.

And if any of the parceners will not suffer any partition to be made, then may the other that would haue partition, purchase a writ called De Partitione facienda, against them that refuse partition, to compell the same to suffer partition to be made accordingly, and then by the iudgement of the Court, the Shirife by the ſerement & oath of twelue men, shall make partition betweene them, and shall assigne to ech sister her portion, as he shall thinke good, without giuing any election of choise to the eldest. A writ de Partitione facienda.

And if two Manours or meases happen to discend to two sisters, and the manors be not of egall value, then may she, to whom the lesse manour or mease is allotted, haue assigned vnto

her a rent proportionably out of the other manour, for the which rent she and her heires may distraine of common right, though they haue no writting thereof.

Distresse of cõmon right.

Finally, ye shall vnderstand, that if a man be seised of lands in fee simple, and hath issue two daughters, & giueth with one of his daughters to an other man that shall marry her, the third or fourth part of his land in frank martage and dyeth, if in this case the daughter that is in this wise bestowed & aduaunced, will haue her portion of her fathers heritage, she must put her land giuen vnto her in frank martage in Hochpot new againe. I meane she must be contented to sucker her said lands to be commixed & mingled with the other lands of which her father died seised in fee simple, so that an equal diuision may be made of the whole, or else she shall haue no part of those lands of which her father died seised. But if her father had made vnto her a common gift in taile, or feoffement in fee, she should not needs to put her lands in Hochpot, but may very well keepe & retaine them still, & also haue as good part of the rest of the lãds of which her father died seised, as her other sister or sisters haue. For a gift in franke martage, is accompted the most free and most liberall gift that can be, and that gift which the law iudgeth to be onely for the aduancement and bestowing of the daughter, where as feoffements in fee simple, and also common giftes in taile be accustomably for other causes, & for the aduantage rather of the giuer, or feoffour, then of the taker.

Hochpot.

Franke martage.

Also if parceners make partition of lands

being

being within age that partition is voide.

And if parceners in fee simple make partition and the part of the one is better then the other being of full age of xxj. yeres, then the partition is good and can not be defeated, but if it be of lands in fee taple, the one part being better then the other, that partition may be defeated by their heires.

Of Ioyntenants. Chap. 15.

HEtherunto verily haue we spoken of Coheires called Parceners of the common Law, which as is heretofore declared, doe come to landes and other hereditaments ioyntly by the course, operation and acte of the Law. Now shall we speake somewhat of them which either ioyntly or seuerally come to lands, tenements, or other hereditaments by their own purchase, acte, procurement and working. And of these they that come to them by ioynt title, way or colour, be called ioyntenants, but they that come by seuerall tytles, wayes, or colours, to landes or tenements bee named tenauntes in common.

So then, if a man being seised of landes or tenements or other hereditaments, shall there- Tenants in common.
of enfeoffe two, three, foure, or more, to haue & to hold to them in fee simple, fee taple, or for terme of their liues, or for terme of an others life, these persons so enfeoffed and seased, bee called Ioyntenaunts. Also if two or moe doe expell and disseise an other man of any Landes & tenementes to their owne behoone and vse, these Disseisours and Wrong doers are nowe

become ioyntenants, because by their owne Act they come ioyntly to this land. But if they doe dissease an other man to the vse onely of one of them, in this case they be not ioyntenants, but he to whose vse the disseisin is made is tenaunt alone of the same, and the others haue nothing in the tenancy, but be called aydours or coadiutors to the disseisin.

Disseisin

And yee shall vnderstand, that a disseisin is properly, where a man entereth into any lands or tenements there where his entrie is not lawfull, and putteth out him which hath the freehold of the same.

Suruiuour taketh place.

And ye shall furthermore know, that the nature of ioyntenancie is, that he which suruiueth & ouerliueth ỹ other, shall haue to himself alone the whole and entire tenancie according to that estate which he should haue had if the ioynture had beene continued, as for example, three iointenants be of lands in fee simple, & the one hath issue & die, in this case the two which doe ouerliue their fellow, shall haue the whole lands betweene thẽ, & the issue of him that is departed getteth nothing. And if the second tointenant hath also issue & die, the third which hath ouerliued them both, shall now haue and enioy the whole to him and to his heires for euermore.

Diuersitie.

But otherwise it is of coheires which in our law is called parceners. For if there be three such coheires & parceners, and before any partitiõ made, the one haue issue a sonne or a daughter & dyeth, her portion shall discend and fall to his child, and shall not runne amongst the other ioynt heires or coparceners. Howbeit if such

part

parcener or coheire had died without issue, then should his portiõ haue discended to his coheirs. But how not by force of suruiuour or ouerliuing, which in latine is called Ius acrescendi, but by very discent, for where any of the coheirs die without issue, who can be heire to him or her so dying, but the other coheires to him or her so dying, or the rest of the coheirs if there be many.

And like as this right of suruiuor or ouerliuing, holdeth place amongst ioyntenants of landes and tenements, so in like manner it holdeth place amongst thẽ which haue toynt estate or possession with others of chattels, whether they be reall or personall. As (for example) if a lease of landes or tenements be made to many for terme of certaine yeares the ouerliuer or ouerliuers, shal haue the whole during the terme by force of the same lease. So of chattels personal, if an horse, oxe, grain, or other such personal chattell be giuen to many, hee which ouerliueth shall haue the same alone. In semblable wise it is of debts & duties. For if an obligation bee made to many for one debt, & of some other couenants & contracts, the law is likewise so.

Ioyntenants of reall and personall goods.

Also some ioyntenaunts may bee which may haue toynt estate and bee ioyntenants for terme of their liues, & yet haue seuerall inheritances. As where lands be giuen to two men and to the heires of their two bodies engendred, in this case, these two persons haue toynt estate for terme of their two liues. And yet they haue seuerall inheritance. For if the one haue issue and die, the other that suruiueth shall haue all by force of the suruiuour for terme of his life.

Ioyntenants of seuerall inheritances.

And if he that ſuruiueth hath alſo iſſue and die, then the iſſue of the one ſhall haue the halfe of the lands, & the iſſue of the other ſhal haue the other halfe, & they ſhall holde the land betweene them in commō, & ſhal not be tenantes, but tenants in common and the cauſe & reaſon why ſuch donees in ſuch caſes haue a ioynt eſtate for terme of their liues, is for that at the beginning the lands were giuen to thē two which words with out more ſaying, make a ioynt eſtate to them for terme of their liues, for if a man will let land to another by deed or without deede, not making mention what eſtate he hath, & of this maketh liuery of ſeiſin, in this caſe the leſſee ſhall haue an eſtate for terme of his life. And if he haue no liuery of ſeiſin, he is tenant at will. And ſo for aſmuch as the lands were giuen vnto thē, they haue a ioint eſtate for terme of their liues. But the cauſe why they haue ſeuerall inheritance, is this for that they can not by poſſibilitie haue an heire betweene thē engendred as a mā & a womā may haue, wherfore the law will that their eſtate & their inheritance ſhalbe ſuch as reaſon will after the forme and effect of the wordes of the gift and that is to the heires that the one engendred of his body by and of his wiues, & to the heires that the other engendreth of his body by any of his wiues. So it behoooueth by neceſſitie of reaſon, that they haue ſeuerall inheritances. And in ſuch caſe if the iſſue of one of them after the death of thē both both die, ſo that he hath no iſſue aliue of his body engendred, then the donor which gaue the land, or his heires may enter in the halfe as in his reuerſion though the other hath

Tenants in common.

hath issue alive. And the cause is, that forasmuch as the inheritances be severall, therefore the reuersion in the law is severed, & the survivour of the issue of the other shall hold no place to haue the whole. And as it is said of males, in ỹ same maner it is where lands be giuen to two females and to the heires of their two bodies begotten.

Also if lands be giuen to two, & to the heires of one of them, this is a good iointenancy, and the one hath a freehold, and the other hath a fee simple, and if he which hath fee simple die, he that hath the freehold shal haue the whole by the survivour for terme of his life. Survivour holdeth no place.

And if these two iointenants ioyne in a gift in the taile to a stranger, reserving a rent to him that hath an estate but for his life, this reservation is void to make a tenure. Likewise it is where tenements be giuen to two, & the heires of the bodie of one of them engendred, the one hath a freehold, and the other fee taile.

Note, if two iointenants be seised of an estate of fee simple, and the one granteth a rent charge by his deed to an other, out of that which to him belongeth, in this case during the lyfe of the grauntour, the rent charge is good and effectuall, but after his decease the rent charge is void, as to charge the lands, for he that hath the land by the survivour, shall hold all the land discharged, the cause is for that he that surviueth claimeth to haue the land by the survivour, and not by discent of his fellow. But otherwise it is of parceners or coheires, for if there be two parceners in fee simple, & before any partition be made, ỹ one chargeth that, that to him belongeth Rent charge graunted by a Iointenant.

Diuersitie.

longeth by his deede of a rent charge, and dieth without issue, here that which to him belongeth discēdeth to the other parcener, and in this case the other parcener shall hold the land charged, because he commeth to the halfe by discent as heire. Also if there be two iointenants in fee simple, within one borough where the lands & tenemēts within the same borough be deuisable by testament, if the one of the said iointenāts deuise that which to him belongeth by testament & die, this deuise & legation is void. And the cause is for that, that no deuise may take effect til after the death of the testator which bequeathed & deuised the same, & by his death all the land incontinēt commeth by the law to his fellow that survyueth by the survyuor, which neither claimeth nor hath any thing in the land by the deuise, but in his owne right by ꝯ survyuor after the course of the law, & for this cause such a deuise is void.

Deuise by testament.

A ground of the law.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise for the cause above remembred. And it is commonly said, that euery iointenant is seised of the land that he holdeth iointly per my & per tout, that is, throughout and by all. And this is as much to say, that he is seised by euery parcel and by all, which saying is true, for in euery parcell and part, and throughout all the landes and tenements he is iointly seised with his fellow. And therefore if the one iointenaunt make a feoffement to his companion, that is void, because he can make no liuery of seisin to him. Also if two iointenāts be seised of certain landes in fee simple, and thone letteth that, that to him belong-

Diuersitie.

belongeth to a ſtranger for terme of xl. yeares and dieth within the terme, in this caſe after his death the leſſee may enter and occupy the halfe to him letten during the ſaid terme, though the leſſee neuer had poſſeſſion of it in the life of the leſſour by force of the leaſe. And the difference betweene the caſe of the grant of a rent charge and this caſe is this, that in the grant of rent charge by a iointenant, the lands or tenements abide alway as they were afore, without that, that any hath right to haue parcell of the tenements but themſelues, & the tenements abide in ſuch plite as they were before the charge. But where a leaſe is made by a iointenant to an other for terme of yeres, incontinent by force of the leaſe, the leſſee hath right in the ſame land, that is to ſay, of all that, that to his leſſour belongeth by force of the ſame leaſe during his terme. And if the leſſor in this caſe die, the other iointenant ſhall haue the rent or terme during the ſaid terme, becauſe the reuerſion is come to him by ſurutiuour. Finally, if a ioint eſtate be made of land to the huſband & wife, and to the third perſon, in this caſe the huſband & the wife haue not in the law in their right but the halfe, & the third perſon ſhal haue as much as the huſband and the wife haue, that is to ſay, the other halfe: And the cauſe is, for that the huſband & wife be but as one perſon in the eye of the law. And it is herein like caſe as if an eſtate be made to two iointenants, where the one hath by force of the iointure the one halfe, & the other the other halfe. In ſemblable wiſe it is where an eſtate is made to the huſband and wife, and to other two men,

Diuerſitie betwene a grant of a rent and leaſe.

men, in this case the husband and the wife haue not but the third part, and the other two men the other two parts.

Also if two or three together disseiseth an other of lands and tenements to their owne vses, then such disseisors be called iointenants.

More shall be said of this matter touching Iointenants in the next Chapter.

Tenants in common. Chap. 16.

TEnants in common (as I said before) be they that haue lands or tenements in fee simple, fee taile, or for terme of life, which haue such lands and tenements by seuerall titles, and not by one ioint title, and none of them knoweth that which is seuerall to him. And in this case they ought by the law before partition made betweene them, to occupy such lands and tenements in common, & vndeuided, and to take the profits in common. And because they come to such lands & tenements by seuerall titles, and not by one selfe ioint title, and their occupation & possession in the same is among them in common, they be called tenants in common, or tenants pro indiuiso. As for example, if a man enfeoffe two iointenants in fee simple, and the one of them alieneth that, that to him belongeth to an other in fee, now the other iointenant and he to whom the alienation was made, be tenants in common, for that they be seised of such tenements by seuerall titles, for the one commeth to the one halfe by the feoffement of the iointenant, and the other hath the other halfe by force of the first feoffement made to him and to his first fellow, and so they be in by seuerall titles and by

seues

ſeuerall feoffements.

And it is to wit, that when it is ſaid in anie booke, that a man is ſeiſed in fee without more ſaying or addition, it ſhalbe vnderſtood fee ſimple, for it ſhall not be vnderſtood by ſuch a word in fee, that a man is ſeiſed in fee tayle, except there be put in it ſuch addition in tayle. Diffinition of fee only.

Alſo if three iointenants be & the one of them alieneth that which vnto him belongeth to an other in fee, in this caſe the alienee is tenaunt in common with the other two ioyntenants. But yet the other two ioyntenants bee ſeiſed of the two parts ioyntly, & of theſe two partes the ſuruiuor betweene them holdeth place. Io yntenants.

Alſo if there be two ioyntenants in fee, & the one giueth that, that vnto him belongeth to an other in the taile, the donee and the other iointenant be tenants in common. But if the lands be giuen to two men, and to the heires of their two bodies engēdred, the donees haue a ioint eſtate for terme of their liues, and if each of them haue iſſue and die, their iſſues ſhall hold in common.

Alſo if landes be giuen to two men to haue & to holde the one halfe to the one & to his heires, and the other halfe to the other & to his heires, they be tenants in common.

Alſo if a man ſeiſed of certaine lands enfeoffeth another in the halfe of the ſame land without any ſpeech of aſſignement or limitation of the ſame half in ſeueralty, at the time of the feoffment, then the feoffee and the feoffour ſhall hold their parts of the land in common.

And as it of tenaunts in common of landes or tenements in fee ſimple, fee tayle, euen ſo it

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Ioyntenants. is of tenaunt for terme of life. Therefore if two ioyntenants be in fee, & the one letteth to a man that, that vnto him belongeth for terme of life, and the other iointenant letteth that which to him belongeth, to an other for terme of lyfe also, these two lessees be tenants in common for terme of their liues. Also if a man let landes to two men for terme of their liues, of whom the one granteth all his estate to another, then that other tenant for terme of life, and hee to whom the graunt is made, shalbe tenants in common during the time that both the lessees be aliue.

Note, if there be two ioyntenants in fee, and that one letteth that, that vnto him belongeth to another for terme of life: the tenant for terme of life during his life, and the other tenant that did not let, be tenants in common. And vpon this case a question may rise as thus. Let the case be that the lessor hath issue & dieth, ioyning the other ioyntenant his fellow, and liuing the tenant for terme of life, the question is whether the reuersion of the halfe that the lessor hath shall discend to the issue of the lessour, or whether the other ioyntenant shall haue it by the suruiuour or no. And some haue said that the other iointenaunt shall haue the reuersion by the suruiuour, for as much as when the iointenants were iointly seised in fee simple, though one of them made an estate of that, that vnto him belongeth for terme of life, and though hee hath seuered the frankte-nemēt of that, that to him belongeth by the lease, yet he hath not seuered the fee simple.

Question.

But the fee simple abideth to them ioyntly as it was before. And so it seemeth vnto them, that the

the other ioyntenant which suruiueth shal haue the reuersion by the suruiuour. But other haue thought the contrary, and this is their reason. When one of the ioyntenãts letteth that which vnto him belongeth to another for terme of life, by such lease the franktenement, is seuered from the ioynture. So that the reuersion that is dependant vpon the same franktenement, is seuered from the ioynture. Furthermore if the lessor had reserued to him a yerely rent vpon the lease, the lessor only should haue the rent, which is a proofe that the reuersion is onely in him, & that the other hath nothing therein.

Also if the tenant for terme of life were impleded and make default after default, the lessour shall bee onely hereupon receiued to defend his right and not his fellow, which proueth the reuersion of the halfe to be onely in the lessour and so consequently, if the lessour die, lyuing the lessee for terme of life, the reuersion shall discend to the heires of the lessor, and shall not come to the other iointenãt by the suruiuor after these mens opinions, yet it is doubtfull. But in this case, if the ioyntenant that hath the franktenement, haue issue and die, lyuing the lessor and the lessee, then it seemeth that the issue shall haue the halfe in his demesne as of fee by discent, forasmuch as the franktenement may not by nature of the ioynture be annexed to a reuersion, and it is certaine that he that made the lease was seased of the halfe in his demesne as of fee, and that none shall haue any ioynture in his franktenement. So that this shall discend to his issue. Resciue. Quære.

If three iointenants be, and the one releaseth by

by his deed to one of his fellowes al the right he hath in the land, then hath hee to whom the re-
Release. lease is made the third part of the lãds by force of the release, and hee and his fellow shall holde the other two parts joyntly. And as to the third part that hee hath by force of the release hee holdeth it with himselfe & his fellow in common.

And it is to wit, that sometime a deede of release shall take effect to put the state of him that made the release in him to whom the release is made as in the case aforesaid.

Also if a joynt estate be made to the husband and wife and to a third person, & the third person releaseth his right that hee hath to the husband: then hath the husband the halfe which the third person had, and the wife of this hath nothing. Semblably if the third person had released to the wife not naming the husband in the release, then should the wife haue the halfe that the third person had, and the husband nothing of this but in the right of his wife, because such release shall enure to put the estate in him to whom it was made of all that, that belongeth to him that made the release. Againe in some case a release shall enure and serue to put all the right that a man hath that made that release in him to whom it is made. As a man being seised of certaine lands is disseised by two disseisors if the person disseised by his deed release all his right to one of the disseisors, then hee to whom the release is made shall haue and holde all to him alone and put out his fellow out of the occupation of it. And the cause is for that the two dis-
Disseisours. seisors were seased by wrong by them done a-

gainst

gainſt the law, & when one of them getteth the releaſe of him that had right to enter, this right reſteth in him to whom the releaſe is made, and in ſuch plite as if he that had the right had entred & infeoffed him of the ſame. And the cauſe is, for that he that before had an eſtate by wrong, hath now by the releaſe a rightfull eſtate.

Releaſe by way of extinguiſhment.

And in ſome caſe a releaſe ſhall inure & take effect by way of extinguiſhment, and ſuch a releaſe ſhall helpe the tointenant to whom the releaſe was not made, aſwell to him to whom it is made, as if a man be diſſeiſed, and the diſſeiſour maketh a feffement to two men in fee, if the perſon diſſeiſed releaſe to one of the feoffees in fee by his deed, then ſuch releas ſhall inure to both the feoffees, becauſe the feffees haue their eſtate by the Law, that is to ſay, by the feoffement, and not by wrong done to any other.

A releaſe ſhall inure to him in the remainder.

And in like maner, if the diſſeiſour make a leaſe to a man for terme of life, the remainder ouer to an other in fee, if the diſſeiſee will releaſe to the tenant for terme of life all his right, this releaſe ſerueth aſwell to him in the remainder, as the tenant for terme of life. And the cauſe is for that the tenant for terme of life commeth to his eſtate by the courſe of the law, and for this cauſe the releaſe ſhall inure and take effect by way of extinguiſhment of the right of him that hath releaſed. And by this releaſe the tenant for terme of life hath no greater eſtate then he had before the releaſe made vnto him, and yet the right of him that releaſed is all vtterly extinct & gone. Wherfore foraſmuch as ſuch a releaſe cannot inlarge the eſtate of the tenant for

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terme of life, it is reason, that it shall serue him in the remainder.

Also if there be two parceners, and the one alieneth his part to an other, the other parcener and the alienee be tenants in common.

Tenants in cõmon by title of prescription.

Furthermore, tenants in common may be by title of prescription, if that one & his auncestors or they whose estate he hath in the halfe haue holden in common the same halfe with the other tenant that hath the other halfe, & with his auncestours, or them whose estate he hath as vndeuided time out of mind. And ye shal marke, that in some case tenants in common ought to haue of their possession seuerall actions, & in some case they shall ioyne in one action, for if there be two tenants in cõmon, & they be disseised, they ought to haue against the disseisor two assises, and not one assise. For euery of them ought to haue an Assise of his halfe, because they were seised by seuerall titles. But otherwise it is of Iointenants, for if there be xx. iointenants, & they be disseised, they shall haue in all their names but one assise, because they haue but one ioint title.

Actions seuerall.

Assise.

Assise.

Also if there be three iointenants, of whom the one releaseth to one of his fellowes all the right he hath, and afterward the other two be disseised of the whole, in this case they shal haue in both their names one Assise of the two parts: And as to the third part, he to whom the releas was made ought to haue therof an Assise in his owne name, because as to the third part he is tenant in common.

Diuersitie.

Also as to sue actions that touch the realtie, there is a diuersity betweene parceners that are

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in by diuers diſcents, and tenants in common. For if a man ſeiſed of certaine lands in fee, hath iſſue two daughters, and die, and they enter into the lands as coheires, and ech of them haue iſſue a ſonne, and die without partition made betweene them, ſo that the one halfe diſcendeth to the ſonne of thone parcener, & the other halfe to the ſonne of the other, & they enter & occupy in common, & be diſſeiſed, in this caſe they ſhal haue in their two names one aſſiſe, & not two aſſiſes. And yet the cauſe is, though they come in by diuers diſcents, yet they be coheires & parceners. Alſo if two tenants in common of certain lands in fee, giue the ſame to another man in the taile, or let it to an other for terme of life, yelding an annuitie, or certain rent, or a pound of Pepper, or an hauke, or an horſe, & they be ſeiſed of theſe ſeruices, and afterward all the rent is behind, & they diſtraine for it, and the tenant maketh reſcous, in this caſe as to the rent and the pound of pepper, they ſhal haue two aſſiſes, and as to the hauke, & the horſe but one Aſſiſe. And the cauſe why they haue two Aſſiſes as to the rent and pound of pepper is for that they were tenants in common by ſeuerall titles, and when they made a gift in taile, or leaſe for term of life, ſauing and reſeruing to them the reuerſion, and yelding to them certaine rent, this reſeruation is incident to their reuerſion. And becauſe their reuerſion is in common and by ſeuerall titles, euen as their poſſeſſion was before the rent and other things which may be ſeuered, and which were to them reſerued vpon the gift or vpon the leaſe which be incident by the law to the reuer-

Reſcous.

Plaint in assise.

sion, therefore such things so severed be of the nature of the reuersion. Wherefore it behoueth that the rent and the pound of Pepper which may be severed to be then in common by severall titles. And of this they shall haue two Assises, and euery of them in his Assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper. But of the hauke, and the horse, which cannot be severed, they shall haue but one Assise, for it were an absurdity and thing inconuenient to make a plaint in Assise of the halfe of an Hauke, or of the halfe of an horse. In like maner it is of the other rents & seruices that tenants in common haue in ground by diuers titles.

Personall action.

And ye shall vnderstand, that concerning actions personals, tenants in common ought to haue them iointly in all their names, that is to say, of trespasse, or of offences that touch their tenements in common, as of breaking of their houses, breaking of their closes, and pastures, wasting and defouling of their grasse, cutting of their woodes, and of fishing in their ponds, and such other, and they shal recouer iointly damages, because the action is in the personaltie and not in the realtie.

Damages.

Tenants in common shall haue one action of debt.

Also if tenants in common make a lease of their tenements to an other for terme of yeres, yeelding vnto them yerely a certaine rent, if the rent bee behind, they shall haue one action of debt against the lessee, and not diuers actions, because the action is in the personaltie. But in an auowrie for the said rent, they ought to be severed, because it is in the realtie, as be assises.

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Of Chattels. Chap. 17.

IT is to be knowen that as there be tenaunts in common of lands or tenements: so there be tenaunts in common of possessions & propertie of chattells, as well reall as personall. Of reall, as if a lease be made of certaine landes to two men for terme of twentie yeeres, and when they be thereof possessed, the one graunteth that that vnto him belongeth during the terme to an other he to whom the graunt is made, and the other shall hold and occupie in common.

Also if two ioyntenants haue the ward of the body & of the lands of an heire within age, and the one of them graunteth to an other that, that vnto him belongeth of the same ward, then he to whom the graunt is made, and the other that graunteth not, shall haue & hold it in common. Ioyntenants of a ward.

Of Chattels personals: as if two haue a ioynt estate either by gift or by buying of an Horse, or of an Oxe, or such like, and the one of them graunteth that, that to him belongeth, here shall the grauntee, and hee that graunted not, haue and possesse such chattell personall in common. And in such case where diuers persons haue chattels reals or personals in common and by diuers titles if one of them die, the other that suruiueth shall not haue his fellowes part by the suruiuour, but the executours of him that dyeth shall holde and occupie it with him that suruiueth in like forme as their testatour did, or ought in his life, forasmuch as their tytles and rights were seuerall. Also in the case aforesaide, if two haue an estate in common for terme of yeares, and the one dieth

occupie all and put the other out of his poſſeſſi-
on and occupation, then ſhall he that is put out
A writ de Eiectione firmæ. haue againſt the other a Writ de Eiectione firmæ for the halfe. In ſemblable maner where two hold the ward of landes or tenements during ỹ nonage of a child, if one ſhall put out the other of his poſſeſſion, he that is out ſhall haue
De Eiectione cuſtodiæ. a writ de Eiectione cuſtodiæ of the halfe, becauſe theſe thinges be chattels reals and may bee appoꝛcioned & ſeuered. But no action of treſpaſſe lyeth foꝛ one againſt the other (as foꝛ example. Quare clauſum fregit & herbam ſuam conculcauit & conſumſit noꝛ ſuch like actions) foꝛaſmuch as each of them may enter and occupie in common. But if two bee poſſeſſed of chattels, perſonals in common by diuers titles as of an Hoꝛſe, an Oxe oꝛ a Cow, if the one take it all to himſelfe out of the poſſeſſion of the other, the oꝛther hath none other remedie, but to take it again from him that hath done him the wꝛong, when he may ſee his time.

In like maner of chattels reals, which may not be ſeuered, as in the caſe afoꝛeſaid, where two be poſſeſſoꝛs of ỹ wardſhip of the body of a child within age, if one of thē ſhall take ỹ child out of ỹ poſſeſſiō of ỹ other, the other hath no remedy by any actiō at ỹ law, but to take the child out of ỹ others poſſeſſiō, when he ſeeth his time.

Forme of pleading. Finally, yee ſhall vnderſtand that when a man in pleading and declaring his cauſe, will ſhew a deed of Feoffement made vnto him, oꝛ a gift in fee taple, oꝛ a Leaſe foꝛ terme of life of any landes oꝛ tenements he ſhall vſe his termes in this wiſe, and ſay, by voꝛce of ſuch feoffement, gift,

gift, or lease he was seised &c.

But where a man will declare or plead a lease or graunt made vnto him of a chattell reall or personall, then hee shall say by force of which hee was possessed.

Of Partition to be made by Ioyntenants & tenants in common enacted by 2. statutes made, the one in An. 31. H. 8. & the other in 32. H. chap. 18.

ALL ioyntenants and tenants in common of any estate of inheritance in their owne rights or in the right of their wives of any lands or hereditaments within this realme of England, Wales, or the Marches of the same, shall and may be compelled to make partition betweene them of the same which they so hold as ioyntenants or tenants in common by a Writ de partitione facienda, to bee deuised in the Chancery in like maner as coparceners are compelled to do, and the same writ to be pursued at the common law. And after such partition made, euery of the said ioyntenants and tenants in common, shall & may haue aide of the other: or of their heires, to the intent to dereigne the warranty paramount & to recouer for the rate as is vsed betweene coparceners, after partition made by the order of the common law.

Writ de partitione facienda.

Aide prayed.

Item in the xxxii. yeare of King Henrie the eight, Chap. 32. It is further enacted that all ioyntenants & tenants in common which holde ioyntly or in common for terme of life, yeare or yeres or ioint-nãts or tenants in cõmon where one or some of them haue an estate for terme of

occupie all and put the other out of his possessi-
on and occupation, then shall he that is put out
A writ de Ei-ectione firmæ haue against the other a Writ de Eiectione firmæ for the halfe. In semblable maner where two hold the ward of landes or tenements during ỹ nonage of a child, if one shall put out the other of his possession, he that is out shall haue
De Eiectione custodiæ. a writ de Eiectione custodiæ of the halfe, because these thinges be chattels reals and may bee apportioned & seuered. But no action of trespasse lyeth for one against the other (as for example, Quare clausum fregit & herbam suam conculcauit & consumsit nor such like actions) forasmuch as each of them may enter and occupie in common. But if two bee possessed of chattels, personals in common by diuers titles as of an Horse, an Oxe or a Cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedie, but to take it again from him that hath done him the wronge, when he may see his time,

In like maner of chattels reals, which may not be seuered, as in the case aforesaid, where two be possessors of ỹ wardship of the body of a child within age, if one of thẽ shall take ỹ child out of ỹ possessiõ of ỹ other, the other hath no remedy by any actiõ at ỹ law, but to take the child out of ỹ others possessiõ, when he seeth his time.

Forme of pleading. Finally, yee shall vnderstand that when a man in pleading and declaring his cause, will shew a deed of Feoffement made vnto him, or a gift in fee taple, or a Lease for terme of life of any lands or tenements he shall vse his termes in this wise, and say, by force of such feoffement,

gift,

gift, or leafe he was feiſed &c.

But where a man will declare or plead a leaſe or graunt made vnto him of a chattell reall or perſonall, then hee ſhall ſay by force of whych hee was poſſeſſed.

Of Partition to be made by Ioyntenants & tenants in common enacted by 2. ſtatutes made, the one in An. 31. H. 8. & the other in 32. H. chap. 18.

ALL tointenants and tenants in common of any eſtate of inheritance in their owne rights or in the right of their wiues of any lands or hereditaments within this realme of England, Wales, or the Marches of the ſame, ſhall and may be compelled to make partition betweene them of the ſame which they ſo hold as ioyntenants or tenants in common by a Writt de partitione facienda, to bee deuiſed in the Chancery in like maner as coparceners are compelled to do, and the ſame writt to be purſued at the common law. And after ſuch partition made, euery of the ſaid ioyntenants and tenants in common, ſhall & may haue aide of the other or of their heires, to the intent to dereigne the warranty paramount & to recouer for the rate as is vſed betweene coparceners, after partition made by the order of the common law.

Writ de partitione facienda.

Aide prayed.

Item in the xxxii. yeare of King Henrie the eight, Chap. 32. It is further enacted that all ioyntenants & tenants in common which holde ioyntly or in common for terme of life, yeare or yeres or iointenãts or tenants in cõmon where one or ſome of them haue an eſtate for terme of

like or yeares with other that haue an eſtate of inheritance or freehold in any landes or other hereditaments ſhall be compellable by Writ of Partition to be purſued out of the Chaunceric vpon their caſes, to make ſeuerance & partition of all ſuch landes & hereditaments as they hold ioyntly or in common for terme of life, or liues, yere or yeres, or where one or ſome of them hold ioyntly or in common for terme of life or yeeres with other that haue an eſtate of inheritance or Freehold. Prouided that no ſuch partition nor ſeuerance, be hurtfull to any perſon other then ſuch as be parties vnto the ſaid partition their executors or aſſignes.

Of Conditions. Chap. 19.

FOraſmuch as euery eſtate is either pure or conditional, it were not amiſſe to make ſome declaration of the nature & efficacie of conditions. Wherefore yee ſhall vnderſtand that of conditions, ſome bee actuall conditions, and bee called expreſſe conditions, or conditions in deede, and other ſome bee conditions in law, which be called in Latin conditiones tacitæ ſiue conditiones implicitæ, becauſe they bee ſecretly employed by the law and not expreſſed.

Diuiſion.

Conditions in deede be ſuch as be knit and annexed by expreſſe wordes to the Feoffement, leaſe or graunt either in writing or without: as for example, if I infeoffe a man of certaine lands reſeruing to me, and to my heirs ſo much rent yeerely to be paid at ſuch a feaſt, and for default of payment, that it ſhall be lawfull for mee to reenter, this is a Feoffement vpon condition of payment. And here the reenter of the Feoffor for

for the not payment of the rent shall dissolue and vtterly defeat the feoffement. Semblable it is of gifts in taile, leases, &c. But if the condition be, that for default of payment of the rent, it shall be lawfull for the feoffour to enter againe into the lands, and to hold them till he be contented and satisfied of the rent: this condition not performed doth not dissolue nor vndoe the feoffement, but onely giueth to the feoffour an authoritie to retaine the lands (as it were by way of distresse) till he hath leuied the arrerages of the rent. Distresse.

And ye shall well marke and obserue, that conditions be sometime made to be performed on the feoffees behalfe, & sometime on the feoffors behalfe: On the feoffees behalfe, as when I infeoffe you of lands or tenements vpon condition that you shall doe such an act, as to pay vnto me or mine heires such an annuell rent. On the feoffours behalfe, as when I make a feoffement vnto you vpon condition, that if I pay or cause to be payed vnto you before such a day, such a summe of money, then it shall be lawfull for me to enter againe and retaine my lands in my former estate: In this case he that is the feoffee is called tenant in morgage, which is as much to say, as dead-gage, and it seemeth that the cause why it is so called, is forasmuch as it is doubtfull whether the feoffour will pay at the day limitted and prescribed such a summe of money for the redemption of his lands, or not, for if he do not, his title or interest in the lands thus gaged and oppignorate, is vtterly extinct and gone, without all hope of renewing. Tenants in morgage.

Yee shall also note, that if the Morgager

dyeth before the day of payment, his heyre may redeeme the land bette well, euen aswell as his auncestour that mortgaged the land might haue done, although there be no mention made of heires in the writting.

Also if when the money is lawfully by the mortgager or his heire tendred and proffered, and the lessour refuseth to receiue the same, the feoffour or his heire may enter, & then hath the feoffee no remedy for his money at the common law. Ye shall vnderstand also, that some conditions be vtterly void in the law, and of none efficacie, vertue, or strength, As if a feoffement be made of lands in fee simple vpon condition, that the feoffee shall not alien or put away the same to none other, this condition I say is voide, because the feffee is restrained of his whole power that the law giueth in such case vnto him, and which power and libertie is in maner included in euery feoffement, yet I may abridge him of part of his power, as to condition with him that he shal not alien the lands to such a person, or such. But of gifts in taile otherwise it is, for if I giue lands to a man, and to the heires of his body lawfully begotten, vpon condition that he nor his heires shall alien the landes to none other person, this condition is good and effectuall in the Law, and if he or his heires contrarie to the condition do alien them, then the giuer or his heires may very well enter and retayne the lands for euer, because this condition shall stand with the forenamed statute of Westminster the second, which prohibiteth such alienations to be made.

Conditions voide.

Gift in taile vpon condition.

Hether-

Hetherunto haue I spoken of Conditions in deed, now will I shew what be Conditions in law that be annexed to any estates.

Estates vpon conditions in law.

Know ye therefore, that if the office of a Parker, Steward, Constable, Bedell, or Baillie, or such like office, be granted to a man for terme of his life, though there be no condition at all mentioned in the graunt, yet the law speaketh of a condition in this case, which is, that if the partie to whom such office is giuen, shall not execute all points appertayning vnto his office accordingly, by himselfe, or his lawfull deputie, it shall be lawfull for the graunter, to enter and discharge him of his office, and this condition is called a condition in law.

There be also three other maner of Estates vpon condition, that is to say, conditions against the law, conditions repugnant, and conditions impossible. First estates vpon conditions against the law be, as if a man make a feoffement, gift, graunt, or lease vpon condition, that if the feoffours, donours, grauntours, or lessours kill I. S. which is not the kings enemy, or burne his house, that then it shall be lawfull to the feoffours, donours, &c. to reenter, this condition is void, and the estate good.

Conditions against the law.

And like law is if such conditions be to be performed of the part of the feoffee, grauntee, &c.

But if it be that a lease for terme of yeares be made of land vpon condition, that if the lessees kill I. S. that then he shall haue fee simple, although that he in this case performe the condition, his estate is nothing thereby inlarged, because the condition is against the law.

Also

Obligation.

And ye shall understand, that where an Obligation is indorsed with a condition which is against the law, both the obligation and also the condition be clearely void in the law.

Conditions repugnant.

Estates vpon conditions repugnant be, as if a feoffement, or a gift in tayle be made vpon condition that the feoffee or donee, shall take no profite, or shall doe no waste, and such other like, such conditions be void, and the state good and effectuall in the law notwithstanding.

Also if a lease be made for terme of life vpon condition that he shall not doe fealtie, that is as a void condition.

Likewise it is if a man that hath nothing in the manour of Sale, graunteth a rent charge going out of the same vpon condition, that the person shal not be charged, this graunt is good and the condition is void.

Conditions impossible.

Estates vpon conditions impossible be, as if a feoffement be made vpon condition, that if the feoffee goeth not through the Sea on foote to Calais in one day, then it shall be lawfull to the feoffour to reenter, this is a frustrate and voide condition, and yet the estate is good.

Like law is of a lease made for terme of yeres, &c. or an obligation with a condition impossible vt supra, the obligation or lease is good, and the condition void to all purposes.

An act how straungers shall take aduantage of Conditions, made An. 32 H. 8. Chap. 20.

IT is enacted, that aswell persons which haue, or shall haue any gift or graunt of the king by his Letters patents of any landes, parso-

perſonages, titles, or other hereditaments, or any reuerſion of the ſame which did belong to any monaſtery or other eccleſiaſticall houſe diſſolued or otherwiſe come into the kings handes ſince the fourth day of February in the xxviij. yeere of our Soueraigne Lord king Henry the eight, or which at any time heretofore did belong to any other perſon, and after come into the kings handes, as alſo all other perſons being grauntees or aſſignees to the King or to any other perſon, their heires, executors, ſucceſſours, and aſſignes, ſhall haue like aduantage againſt the fermours, and their executors, adminiſtrators and aſſignes, by entre for non-payment of the rent, or for doing waſte or other forfeiture, and alſo ſhall haue the ſame aduantage by action onely of not performing of other conditions, couenants or agreements contayned in the indentures of their leaſes or graunts againſt the ſaid fermors, grauntees, their executors, adminiſtrators, and aſſignes, as the ſaid leſſors or grauntours themſelues might haue had at any time. And againe mutually and on the other ſide, the ſaid fermours and grauntees for terme of yeres, life, or liues, their executors, adminiſtrators and aſſignes, ſhall haue like aduantage againſt them for any condition, couenant and agreement contained in the ſaid Indenture, as they might haue had againſt their ſaid leſſors and grauntors their heires, ſucceſſors, all benefits and aduantage of recoueries in value by reaſon of any warranty of deed or in law by voucher or otherwiſe onely except.

Prouided that this Act ſhall not extende to charge

charge any person for breach of any couenant or condition comprised in any such writing, but for such as shalbe broken & not performed after the first day of September in the 32. yeare of this king and not before.

Liuery of seisin, and Attornement. Chap. 21.

IN all feoffements, giftes in taile, leases for terme of anothers life, of lands or tenements, there can be no alteration transmutation of possession by the auncient lawes of this realme, vnlesse there be a certaine ceremony abhibited and solempnized in the presence and sight of neighbours or others, which ceremony is called liuery of seisin.

The maner of liuery of seisin.

And yee shall vnderstand, that this ceremony of liuery of seisin is done when the feoffour, donour, lessour, or their deputie come with the neighbours solempnly to ỹ lands or tenements, and they put the feoffee, donee or lessee in possession of the said landes or tenements by deliuering vnto him a clod of earth, or the ring of the dore, or some other thing in the name of seisin, and for this selfe cause this ceremony of law is called liuery of seisin, that is to say, a tradition or giuing of seisin.

Diuersitie betweene possession and seisin.

But this ceremonie is not required in leases for terme of yeres or in leases at wil, forasmuch as the lessour in such lease remaineth still seased and the lessee onely hath possession without any liuery of seisin, and therefore the termes of the law be that such a man is possessed, whereas in feoffements, giftes in tayle, and leases for life, he is called seased.

Where-

Where fore if a Feoffement or Leafe for life be made of lands or tenements & before that the liuery of a ſeiſin be made, the feoffour dieth, the heire of the feoffour ſhall haue the landes, Per ſummum ius, that is to ſay, by the rigour of the law, notwithſtanding that the feoffes haue paid to the feoffor the price of the land, and although the feoffee be in poſſeſſion. But otherwiſe it is of a leaſe for terme of yeares.

Atturnement.

I like ceremonie is vſed when rent charge, rent ſeruice, rent in groſſe, a villaine in groſſe, common in groſſe, common for beaſtes, certaine eſtouers, and ſuch other thinges as paſſe by way of graunt, be graunted, for it is no full and perfect grant till it be conſignat and ſealed as it were with the ceremony of atturnement. This Atturnement is nothing elſe, but when the tenant of land of which a rent graunted is granted, or out of which a rent is graunted, doth make ſome euident ſignification and token that hee accepteth the perſon to whom the graunt is made to be in the ſame reſpect vnto him that the graunter was. As for an example, if the tenant of the land after hee haue heard of the graunt, commeth to the grauntee, that is to wit, to the perſon to whom the graunt was made, and ſay in this wiſe, or in like effect.

How Atturnement ſhall be made.

I agree vnto the graunt made vnto you by ſuch a man, or I am well apaid and contented of the graunte that ſuch a man hath made vnto you. But the moſt vſuall frequent forme of atturnement is, to ſay. Sir I atturne vnto you by force of the ſaid graunt, or I become your tenant, or to deliuer vnto the grauntee, a peny or

a halfe peny by way of attornement.

If a man maketh first one grant to one person, and after another to another person, that graunt shall stand to which the tenant will attorne although it be to the latter graunt.

And ye shall note, that if a man be seised of a manour, which is parcell in demeane, and parcell in seruice, and doth alien the same Manour to another, vnlesse the tenaunt of the Manour doe attorne the seruice shall not passe, onely tenants at will excepted, for it needeth not to cause them to attorne.

Diuersitie. Note furthermore, there is a great difference betweene giuing a peny in name of seisin, and giuing by way of attornment, for when it is giuen by the tenant to the graūtee in the name of seasin, it doth not only imply an attornment, but also it giueth him such a seisin, that if the rent afterward were behind & not paied, he may now vpō the seisin of the peny after a lawfull distresse taken, & after rescous made, bring an assise of nouel disseisin, where as if it were giuen onely by way of attornment he could not bring the assise, but his writ of rescous only, if rescous were made.

Assise.

Writ of rescous.

Also ye shall vnderstand, that where landes be deuisable by Testament, by the custome of any auncient Borough or Citie, if the reuersion of any lands be by Testament bequeathed to a man in fee, and the Testator, which we call the Deuisor dyeth, the deuisee that is to wit, hee to whom the deuise was made, hath forthwith the reuersion in him without further ceremonie of Attornement. Likewise it is if a man by testament doth bequeath a rent charge that he is seased

Attornement.

sed of, or of a rent seruice, there needeth none atturnement at all.

If two iointenants be of land, and the Lord graunteth the seruices to an other, if one of the iointenants atturneth, it is enough.

Finally, if a lease be made for terme of life, the remainder to an other in taile, the remainder ouer to the right heire of the tenant for terme of life, in this case if the tenant for terme of life, will graunt his remainder in fee to an other by his deede, this remainder passeth foorth with, without any Atturnement, for if any atturnement were requisite, it should be made of the tenant for terme of life, which in this case is the grauntour himselfe. And in vaine it is that the grauntour should be inforced to atturne, sith an atturnement is abhibited and had to none other purpose then to haue the consent and agreement of the particuler tenant, to the intent that it may appeare, that he hath notice and knowledge of this graunt, but here where the particuler tenant himselfe is the grauntour, an atturnement were superfluous, and more then needed. Not requisite.

Note further hermore, that where there is Lord and tenant, and the tenant leaseth his tenements to a woman for life, the remainder ouer in fee, the woman taketh a husband, & after the Lord graunteth the seruices &c. to the husband, in this case during the coueiture the seruices be put in suspence. But if the wife die leauing the husband, the husband and his heyres shall haue the rent of them in the remainder, &c. And in this case there needeth no atturnement by word, because the husband that ought to atturne accepteth Suspence.

teth the graunt of the seruices, the which acceptance is an attournement in the law.

Of Seruice. Chap. 22.

HEtherunto haue I briefly touched & ouerrun the sundry kindes and formes of Estates. Now forasmuch as there is no tenure, but hath vnto it some seruice knit and annexed, it were very necessary to declare how manie kinds of seruices there be, & what seruice is due to euery tenure. For the knowledge hereof ye shall vnderstand, that the principall and most common kind of seruice that the tenant oweth to his Lord, is called knights seruice.

Knights seruice. Chap. 23.

KNights seruice includeth homage, fealty, & for the most part escuage, & whosoeuer holdeth his lands by Knights seruice, is bound by the Law of this realme to do vnto his Lord homage & fealty, & to pay for the most part escuage, when it shall be assessed by authoritie of Parliament, as hereafter more plainly shall be declared.

Homage. Homage is the most humble and reuerent seruice that a man of free estate & condition can do, for when the tenãt shal do homage to his Lord, the Lord shall sit, & the tenant then shall kneele downe before him vpon both knees, holding his hands betweene his Lords hands, & say in this wise:

How the tenant shall do homage. I become your man from this day forward, of life, & of member, & earthly honor, and to you shall be faithfull & true, and faith to you shall beare for the lands that I claime to hold of you: sauing the faith that I beare vnto our soueraigne Lord the king, and then the Lord so

sitting

sitting shall kisse him. But if an Ecclesiasticall person, which by his order and profession hath addicted himselfe to the seruice of God in especiall, shall do homage to his Lord, he shall say, I do to you homage, and shal be to you faithful and true, & faith to you shall beare for the tenements that I hold of you, sauing the faith which I owe to our soueraigne Lord the king. What a Religious person shall say when he doth homage.

Also when a woman not married, doth homage to her Lord, she shall not say, I become your woman, for it is not conuenient that a woman should be the woman of any other then of her husband that she shall marrie, but shall say euen as the Ecclesiasticall person saith, I doe vnto you homage &c. And if perchaunce a man holdeth sundry landes and tenements of sundry Lords, & euery of them by knights seruice, then in the end of his homage making, he shall say, sauing the faith that I owe to our soueraigne Lord the king, and to mine other Lords. And none is bound to do homage to the Lord, vnles it be such tenant as hath in the tenancy an estate of fee simple, or fee taile, either in his own right, or in the right of an other. For if a woman haue lands or tenements in fee simple, or fee taile, which she holdeth of her Lord by knights seruice, and taketh an husband, & hath issue, in this case the husband in the life of his wife, shall doe homage, because he hath title to haue the lands by the curtesie of England, if he ouer liueth her, & also he holdeth them now in his wiues right, yet before issue had betweene them, the homage shall be made in both their names. But if the woman dyeth before any homage made in her What a woman shall say. What tenant shall do homage.

life, and the husband keepeth still the lands as tenant by the curtesie, now he shall not doe homage to his Lord, because he hath now an estate but for terme of life.

Fealtie. Fealtie, is as much to say, as fidelitie, or faithfulnesse, in doing whereof the tenant shall hold his hand vpon a Booke, and say thus.

How a tenant shal do fealty. Heare you this my Lord, I to you shal be faithfull and true, and faith to you shall beare for the lands and tenements, which I claime to hold of you, and duely shall doe to you the customes and seruices which I owe to doe to you at the termes assigned, as me helpe God. And then he shall kisse the booke. But he shall not kneele as he that doth homage, nor doe such humble or reuerent seruice as is before declared in homage.

Diuersitie betweene homage and fealtie. And ye shall obserue, that homage cannot be done but to the Lord himselfe, whereas the Steward of the Lords court or the Bayliffe may take fealtie for the Lord.

Also tenant for terme of life shall doe fealtie, but homage as I said he cannot doe.

Now as concerning Escuage, that is to say, the seruice of the shield, ye shall vnderstand, that he that holdeth his lands by escuage, when the King maketh a votage royall into Scotland for the subduing of the Scots, is bound to be with the Kinges Maiestie by the space of xx. dayes well and conuenientlie arayed and appointed for the warre. And he that holdeth his land but by the moitie of the fee of knightes seruice, is bound by the force of his tenure to be with the King by the space of xx. dayes, and so

so proportionably according to the rate & quantitie of his tenure.

But now to our institute and purpose, after this voyage Royall into Scotland, in which the king goeth in person, and after his returne into England againe, a Parliament is wont to be summoned, in which shalbe prescribed and assessed what euery person that holde his land by homage, and went not with the King, neyther by himselfe nor by his deputie, shall pay to his Lorde in satisfaction of his not seruing, and according to the taxation hereof euerie tenaunt shall pay to his immediate Lorde, whether it be to the king or other, after the rate and portion of his tenure, if he holdeth by an hole fee, he shal pay the whole escuage, if by a moitie the halfe, if by the fourth part of a fee, the fourth part &c. And this money thus assessed is called scutage or escuage, for which the Lord to whom it is due, may very well for the non payment thereof distreine. But here it is to be noted, that some tenants by custome vsed time out of minde, are bound to pay but the moytie, or the third part of that, which shalbe assessed and limitted by act of Parliament. Parliament. Distres of escuage.

Yea, and the custome is in some place, that to what summe of money soeuer Escuage is assessed, the tenaunts shall pay neuer but such a certaine summe of money, and this kinde of escuage, is called escuage certaine, that is to say, where escuage is assessed by the Parliament, to a more or lesse summe, the tenaunt to pay to the Lord v. s. and no more nor no lesse &c. such a tenure is called Socage tenure, & not knightes Escuage certaine.

seruice, whereas the other is called escuage vncertaine.

Escuage vncertaine.

Finally ye shall vnderstand, that escuage vncertain is alwaies adiudged to be knights seruice, and draweth vnto it, warde, mariage, and reliefe, but escuage certaine is not knights seruice but is of the tenure of Socage, as shall be hereafter more amply shewed.

Of Ward, Mariage, and Reliefe. Chap. 24.

EVerie knightes seruice draweth vnto it, Warde, Mariage and Reliefe. Wherefore it is now right expedient somwhat to entreat of them.

Warde.

Ye shall therefore be admonished that when the tenant which holdeth his lands by knights seruice dyeth, his heire male being at that time within the age of xxi. yeres, the Lord shall haue the ward, that is to say, the custodie or keeping of the landes so holden of him to his owne vse and profit, till the heire commeth to the full age of xxi. yeeres. For the law here presumeth that till he come to his age, he is not able to doe such seruice, as is of this tenure required.

Mariage.

Furthermore, if such heires be vnmaried at the time of the death of the tenant, then the lord shall haue also the ward, and the bestowing of the mariage of him.

The full age of a woman.

But if a tenaunt by knightes seruice dyeth, his heire female being of the age of xiiii. yeeres or aboue, then the Lord shall haue the Warde neyther of the land, ne yet of the body of such an heire, and the reason hereof is, because a woman of that age, may haue a husband able to doe

doe knights serutce, that is to say, to wait vpon the Kings Maiesties person, when he goeth into Scotland with his armie royall.

But if such an heire female be within age of xiiii. yeeres, and not maried at the time of the death of her ancestor, then the Lord shall haue the warde of the land holden of him, till such heire female commeth to the age of xvi. yeares, by force of an acte of Parliament in the statute of Westminster 1. cap. 12.

Note that there is a great diuersitie in the law, betweene the ages of females & of males, for the female hath these many ages appointed by the law. First at vii. yeres of age the Lord her Father may distraine his tenants for ayde to marrie her. Secondly, at ix. yeres of age, she is dowable. Thirdly, at xii. yeres she is able to assent to Matrimony. Fourthly, at xiiii. yeeres she is able to haue her land, and shall bee out of ward, if shee be of this age at the death of her auncestor. Fiftly, at xvi. yeeres shee shall be out of ward though at the death of her auncestor she was within the age of xiiii. yeeres. Sixtly, at xxi. yeres she is able to make alienations of her landes or tenements. ¶ Whereas the man hath but two ages, the one at xiiii. yeres to haue his landes holden in Socage, and to assent to Matrimonie, the other at xxi. to make alienations. Diuersitie of age. Age of a woman. The age of a man.

Yee shall vnderstande that by the Statute of Merton, 6. Chap. it is enacted, that if in case the lords do marry their wards to villains or others (whereby is disparagement,) if such heires so married bee within the age of xiiii.

peeres, or such age that the said Warde cannot consent to the mariage, then if the frends of this heire complaine, and feele themselues grieued with this vnmeete mariage, the next of kinne to the heire, vnto whom the heritage cannot discend, may enter into the landes, and put out the Lord, which is gardeine in chiualrie, and if the next kinsman will not thus doe, another kinsman of the infant may doe it: And shall take the issues and profits to the behooke and vse of the heire, and shall yeeld accompt thereof vnto him when he commeth to his full age,

Accompt giuing.

Diuers disparagements.

And there bee diuers other disparagements which be not expressed in the said statute, as if the heire being within age of consent, & in ward, be maried to a decrepit person, or cripill, as to one that hath but one foote, or one hand, or that is a deformed creature, or hauing any horrible disease or continuall infirmitie. All these and such like be disparagements.

But here also ye shal vnderstand, that it shall be said no disparagement, vnlesse the heire be so maried when he is within age of discretion, that is to say, within the age of xiiii. yeres. For if he be of that age or aboue, & assenteth to such mariage, it is no disparagement, neither shal ye Lord for such mariage lose his ward, because it shalbe reputed & assigned to the folly of the heire being of age of discretion, to consent to such mariage.

Now if the Lord, then being a gardeine offer to the heire being his warde, a conuenient mariage without disparagement, & the heire refuseth it, as he may at his choise and election vnles well doe, then the Lord shall haue the value of

Value of mariage.

the

the mariage of such heire, when he commeth to his full age. But yet if he marie himselfe being so in ward against the will of his gardeyn, then he shall pay the double value by force of the statute of Merton before remembred.

Double value of mariage.

And ye shall note, that if landes holden by knights seruice discend to an infant or childe within age from his mother, or from any of his auncestours, his father being yet alyue, in this case the Lord shall not haue the mariage of his heire, for during the life of his father, the sonne shall be ward to no man.

One shall not be ward, liuing his father.

Finally, it is to be knowen, that he which is gardein in chualry in right, may before he hath seised the ward, grant the same eyther by deed or without deed to another man, & then he to whom such a grant is made, is called gardein in fait.

Now as touching Reliefe ye shall know, that if a man holdeth his land by knights seruice, & dyeth, his heire being of full age (the full age of the male is xxi. yeares, of the female xvij.) then the Lord of whom the land is holden shall haue of the heire reliefe.

Note ye, that all Earles, Barons, or other the kings tenants (holding of him in chiefe by knights seruice) which die, their heire being of full age at the time of their deathes, that is to say, xxi. yeares of age they ought to pay the old reliefe for their inheritance, that is the heire or heires of an Earle, for an whole Earledome 100. li. The heire or heires of a Baron for an whole Barony an 100. Marbes. The heire or heires of a Knight one 100. shillings, & he that hath lesse, shall giue lesse, according to the old

cuſtome of fees. Like law is obſerued of all others that hold of any other Lords immediatly vt ſupra.

Alſo a man may hold lands of a Lord by two knights fees, and then the heire being of full age at the death of his auncestour, ſhall pay to his Lord for relefe x. pounds.

Seruice of Caſtle garde. Chap. 25.

YE ſhall vnderſtand, that a man may hold by knights ſeruice, and yet not hold by eſcuage, nor ſhal pay any eſcuage, for he may hold by caſtle garde, that is to ſay, by ſeruice to keepe a tower of his Lords caſtle, or ſome other place, vpon a reaſonable warning, when his Lord heareth that enemies will come, or be already come into England.

Ground in the law. This ſeruice is alſo knights ſeruice, & draweth to it, Ward, Mariage, and Relefe, as in all caſes the common knights ſeruice doth.

Of graund Sergeantie. Chap. 26.

THere is alſo an other kind of knights ſeruice, which is called graund ſergeanty, that is, where a man holdeth his lands or tenements of the king by ſuch ſeruice as he oweth in proper perſon to do, as to beare the Banner of our Soueraigne Lord the King, or his ſpeare, or to conduct his hoſte, or to be his Marſhall, or to be the ſewer, caruer, or butler, at the feaſt of the Coronation, or to be one of the Chamberlaines of the receipt of his Eſchequer, or to doe like ſeruice to the King in proper perſon, ſuch

such maner of seruice I say is called graund Sergeantie, that is to say, a great or high seruice, and the cause why it is so called, is because it is the most honorable and most worthy seruice that is, for he that holdeth by escuage, is not appointed by his tenure, to do any other more speciall seruice then an other is bound that holdeth by escuage: but he that holdeth by grand sergeantie, is bound to doe some speciall seruice to the king. The most high seruice.

Also if he that holdeth of the king by graund sergeanty dieth, his heire being of full age, then the heire shall pay to the king for reliefe not onlie C.s. as he that holdeth by escuage shall doe, but moreouer the cleere yeerely value of those lands and tenements which he so holdeth of the king by graund sergeanty. Reliefe of the tenāt by grand sergeanty.

Furthermore, ye shal obserue, that in the Marches of Scotland, some men hold of the king by cornage, that is to say, blowing of a horne, to the intent to warne the men of the Countrey, when they here that the Scots or other their enemies be comming, or be already entred into England, which seruice is also a kind of graund sergeantie. Graund sergeantie therefore is as much to say in Latin, as Magnum seruitium, that is to say, a great or high seruice, Like as Petie sergeantie, is called Paruum seruitium, that is to say, a litle or small seruice. Tenure by Cornage. Definition of Sergeantie.

But to reuert againe to the matter, yee shall note, that if any tenant holdeth of any other lord then of the king by such seruice of cornage, then it is no graund sergeanty, but yet neuertheles, it is knightes seruice, and draweth to it ward, mariage,

Rule in the Law.

riage and reliefe, for this is a rule infallible, that none can hold by graund sergeantie, but of the Kings Maiestie onely.

Finally, ye shal vnderstand, that all they which hold of the king by this seruice called grand sergeanty, do hold of the king by knights seruice, and by vertue of this tenure the king shall haue of them ward, mariage, and reliefe, but escuage yet he shall not haue of them, vnlesse they hold by escuage of him by expresse speciall words.

Petite Sergeantie. Chap. 27.

Petite sergeantie is socage in effect.

TEnant by Petite Sergeantie, is he that holdeth his land immediately of our soueraigne Lord the king by this maner of seruice, to pay to the king yerely eyther a Bow, a Speare, a Dagger, a payre of Gauntlets, a payre of Spurres of Gold, a Shaft, or such other small things appertayning to the warre, and this seruice is in effect but socage, because that such a tenant is not bound by his tenure to go, ne do any thing in his owne proper person, touching the warre, but onely to render and pay yerely certaine thinges to the king as a man ought to pay a rent. Wherefore this seruice of petite sergeanty is no knights seruice. But yet ye shall note, that a man cannot hold neyther by Petie sergeanty, neyther by Graund sergeanty, but of the king onely.

Homage aunceſtrell. Chap. 28.

TEnant by homage aunceſtrell, is he which holdeth his land of his Lord by homage, and doth he & his aunceſtors whole heire

he

hee is, haue holden the same land of the said Lord, and of his ancestors time out of mind by homage, and haue done vnto them homage, and this is called homage auncestrell, by reason of the long continuance: which hath beene by title of prescription, aswell concerning the tenancie in the blood of the tenaunt, as concerning the lordship in the lord. And this seruice of homage auncestrel, draweth vnto it warranty (that is to say) if the Lord which is now in life, hath once, receiued the homage of his tenant, hee ought to warrant the same tenaunt what time soeuer hee shall be impleaded or sued, for such lands so holden of him by homage auncestrell.

VVarrantie becaufe of homage auncestrell.

Moreouer such seruice of homage auncestrell draweth vnto it acquital, that is to say the Lord ought to acquite the tenant against other lords that can demaund any maner of seruice of the tenancie.

Wherefore if in this case the tenaunt which holdeth by homage auncestrell, be impleaded of his lands, and voucheth, or calleth his Lord to warrantie, who commeth in by Processe, and demaundeth of the tenaunt what hee hath to binde him to the warrantie, and the tenaunt sheweth how he and his ancestors, whose heire he is, haue holden his landes of him and of his auncestours time out of minde, surely the Lord if he cannot denie this, and if hee hath receiued the homage of such a tenaunt, is bounde by the Law to warrant him his land, so that if the tenaunt lose his landes in default of the Lorde thus vouched, that is to say, called to warrantie, hee shall recouer against him as much in

value of those landes and tenements which the Lord had at the time of calling to warranty or at any time after. But if the Lord neuer receiued the homage of his tenant, then he may, very well when hee is thus vouched disclaime in the Lordship or seigniory, and so put out the tenant of his warrantie. Wherefore ye shall note that in euery case where the Lord disclaimeth in his seigniorie in Court of Record, his seigniory or Lordship is extinct, and the tenaunt shall holde from thencefoorth of the next Lord to him that thus disclaimeth.

Thus ye perceiue that homage auncestrel is not, but whereas is a long continuance, as well in the blood of the tenaunt in respect of his tenancy, as in the blood of the Lord in respect of his seigniory. Wherefore if the tenant doth once alien his landes to another, although hee purchase the same againe, yet he shall not hold any longer by homage auncestrel because of his discontinuance, but shal hold it now by the vulgar and accustomed homage.

Of Liueries. Chap. 29.

Tenant in chiefe of the king.

When one dieth which held of the king by knights seruice in Capite, that is to say in chiefe, his heirs being within age, the king (as before is declared) shal haue the wardship and custody, aswel of the lands as of the body, that is to wit the mariage, if hee be vnmaried. But if the heire be of full age at the time of the death of such auncestor, yet shall the king by his prerogatiue royall haue primer seisin of all the lands, tenements, and other hereditaments,

Primer seisin.

dtaments, whereof such his tenant was seised in his demeane as of fee. And if such an heire will enter into his landes when hee commeth to his full age before he sue his liuerie and receiue seisin by the king, no freehold shall accrew nor grow vnto him, but he shalbe deemed an intruder into the kings possession, yea, and if he die so seised in the meane time, his wife shall haue no dowrie of such lands, wherefore it behoueth in any wise, that such heire aswell male as female, comming to full age before hee or she enter into their land, to sue liuerie. The maner and forme whereof according to the act of parliament lately promulgated and set forth, I intend briefly to recite. Intruder vpon the kings possession.

How heires ought to sue their liueries, enacted 33. H 8. cap. 21. Chap. 30.

NO person or persons hauing lands or tenements aboue the yeerely value of v. li. shall haue any liuery before inquisition or office found before the Escheator or other Commissioner, by vertue of the Kings writ of Diem clausit extremum, or Commission directed out of the Chauncery or other Courts, hauing authoritie to make such a Writ or Commission, which shal not passe out of the same but by warrant, or bill assigned, & subscribed by the Master of Wards or Liueries, the Surueior, Attorney, and Recoueror of the said Court, or three, two, or one of them to be directed and deliuered to the Chancelor of England, or to any other Chancelor or Officer hauing power to award de such VVrit of Diem clausit extremum.

ſuch Writs, and for the writting and ſealing of the ſame ſhall bee paide of the accuſtomed fees. But if the lands exceed not the ſaid yeerely value of v. li. then they ſhall pay for the ſeales of euery ſuch writ or commiſſion viij. pence, & for the writting vj. d. and not aboue.

And the inquiſitions and offices hereupon found, ſhall bee returned by the ſaid Eſchetors, or Commiſſioners into the ſame Court from whence the writ or Commiſſion was awarded, which done, the clarkes of the petite bagge ſhall receiue the ſame offices, and make a tranſcript thereof to the Maſter of the Wards and Liueries. And then the ſaide Maſter and the Surueyour, Atturney & generall Receiuor, or three of them, whereof the Maſter or Surueyor to be one, ſhall couenant and indent with ſuch perſons for their liuery of the Caſtles, Manours, Lordſhips, landes, tenements, and hereditaments, comprized or not comprized in ſuch offices, and ſhall make and ſet a rate and price of the ſame, and appoint the dayes of payment thereof by Obligation to bee taken for the ſame to the king.

And euery bill, for any ſpeciall or generall liuery aſſigned, by the hands of the ſaid Maſter, Surueyour, atturney, receiuour, or three of them, whereof the Maſter, or Surueyour to bee one, ſhall be warrant ſufficient to the Lord Chauncelor, or other Officer, hauing power to paſſe liueries vnder any of the kings ſeales accordingly. In which caſe the clarkes of the petie bagge or other clarkes, by whom the liueries bee written, ſhall receiue aſwell for themſelues as for other

other such fees as hath been accustomed.

Item euery person may sue at his pleasure a generall Liuery for any manours, landes, tenements, rents, reuersions, remainders, or other hereditaments, whereof the cleere yerely value shall not exceede xx. li. Prouided that an office be thereof found, and a warrant first obtayned of the said Master and others, as is aforesaid. Generall liuerie.

And where such generall liuery is sued, if the landes exceede the yerely value of v. li. they shall pay for the Seale xx.s. iiij.d. and all other fees accustomed, as afterward shal be declared. But if they exceede not the yerely value of v. li. they shall pay but these fees following: that is to say, For the seale of the liuerie xij. d. To the Clarkes of the petie bagge for the writting, and the inrolling xx. d. For the respect of the homage in the Hanaper viij. d. To the Lord great Chamberlaine xx. d. To the Master of the Rolles xx. d. And the Clarke of the Liueries for the warrant and inrolling of the Liuerie xx. d.

Item no person or persons shall pay in the Exchequer, or any other Courts for the respect of homage, for any lands or hereditaments not exceeding the yeerely value of v. li. aboue viij. d. And for the entring thereof, and warrant of attourney, aboue iiij. d. Respect of homage.

And the value of such landes and hereditaments not exceeding the yeerely value of xx. li. shall be taken as it is limitted in the offices founden thereof, except by the examinations and certificate of the said Master, Surueyour, Attourney, & Receiuor, or three of them, it shall

other-

otherwise appeare and be declared in any of the kings Courts.

Also no Escheatour shall sit only by vertue of his office, for inquiry of the tenure, title, or value of any lands or other hereditaments holden of the king, being of the yeerely value of v. li. or aboue, without the kings writ to him directed, vpon paine to forfait v. li. for euery time he shall so do. Neither shall he take for the finding of any office of lands not exceeding the yeerely value of v. li. aboue xv. s. that is to say, vj. s. viij. d. for his owne fee, and viij. s. iiij. d. for the writing of the office. And for the charges of the Jury iij. s. And for the officers that shall receiue the offices in any Court of record iij. s. vpon paine that the Escheator doing otherwise, shall for euery time forfait v. li. And vpon like paine the officers of euery Court of record where such inquisitions shall be returned, being offered vnto them, within one moneth next after the finding therof, shall receiue them. The one moitie of all which forfaitures to the king, and the other to the partie that will sue for the same &c.

Paine of forfait.

Fees of office.

And they which hereafter shall be in case to sue liuerie, whose landes and tenements exceede not the yeerely value of v. li. may lawfully sue foorth that generall liuerie by warrant from the said Courts, as is aforesaid, although none other inquisition be thereof had nor certified, paying neuertheles the fees aboue remembred.

Finally euery person shall sue foorth his parent for his liuery, within three monethes next after the assignement of his bill, or else his bill

assigned

assigned to be void and of none effect.

Hereafter insueth the fees accustomed of the generall Liueries.

FIrst to the Clarkes of the petty bagge, for the respect of homage & fealty, the writing & inrolling xiij.s.iij.d. To the Lord great Chamberlaine xl.s. To the Master of the Rolles iij.li. To the clarkes of the liueries for writing of the Indentures & Obligations xx.s, beside counsel.

The fees of the speciall Liuerie accustomed to be paied be these following, that is to say, for the Signet iij.li. x.s. For the priuie seale xxx. s. For the great seale xiij.s.viij.d. To the clarks of the petie bagge xl.s. To the Master of the Liueries clarkes xl. s. For inrollment of the knowledge of the Indenture xij. s. To the Lord great Chamberlaine of England xl. s. For the writ of the allowance for the same liuerie x.s.vj. d.

And note ye, that sometime in especiall cases the fees be more, and sometime lesse, as the case and matter doth require.

Hetherto haue we briefly touched all kinds of knights seruice, & things incident to the same. Now will we with like briefenes declare the other kinds of seruices which commonly be comprised vnder the generall name of Socage. For all lands or tenements, either they be holden by knights seruice, or else by socage tenure, or at least by the nature of socage tenure, which in effect is all one. Wherefore first we shall define what Socage is in the proper signification, which done, we shall peruse the other kindes of seruice which be of the nature of socage tenure.

Of Socage.

Chap. 31.

What Socage tenure is.

SOcage is properly where the tenaunt is bound to come with his yoke, that is, with his plow to eare and sowe a parcell of the demeane lands of his Lord, which seruice in auncient time was verie common, but now by the mutuall consent, both of the Lord and the tenant, it is conuerted for the most part into a yearely rent. Howbeit, the name of Socage abideth still. Wherefore now, all that is not knights seruice, is called by the name of socage. So that if a man holdeth by fealty onely, or by fealty and homage for all maner of seruice, it is but socage tenure, for homage alone maketh not knights seruice. Also if a man holdeth by escuage certaine, as I haue said heretofore, he holdeth in effect but by Socage.

Gardeine in socage.

Now where as a man holdeth his lands by Socage and dyeth, his heire being within the age of xiiij. yeares, the Lord shall not haue the ward, but the next of kinne to the heire, to whom the heritage cannot discend, shall haue the title and wardship, aswell of the land, as of the heire, till the heire come to the age of xiiij. yeares. And such tutor or gardeine is called gardeine in socage, and shall render accompts to the heire, of the issues and profites that he hath receiued of the lands during such time, deducting his reasonable costes and expences, so that he shall not haue the wardship to his owne vse and profit, as the Lord which is gardeine in chiualrie hath.

And in case the gardeine in socage dyeth before he hath made his accompt, the heire is without

without remedy, because no writ of account, lyeth against the executors but for the king only.

Finally, yee shall understand that when tenant in Socage dyeth, the Lorde of whom the land is held shall haue relefe, that is to say, the value of the rent that is yeerely due vnto him of the tenancie, beside the yeerely rent, so that in effect after the death of his tenant, he shall haue of the heire two rentes, saue that for the relefe he may distraine forthwith, but for the accustomed rent he cannot distraine till the vsuall day of payment be come. Rent. Distresse.

Franke almoigne. Chap. 32.

TEnaunt in franke Almoigne, that is to say in free Almes, is where a Bishop, Deane, or any other Ecclesiasticall person holdeth of his Lord in pure and perpetuall Almes, and such tenure began first in olde time after this maner. When a man was seased in auncient time of certaine landes or tenements in his demesne as of fee, and of the same tenements enfeoffed an Abbot and his Couent, or a Prior and his Couent, or anie other person Ecclesiasticall, as a Deane of a Colledge, Master of an Hospitall, or such like, to haue and to hold the same lands to them and to their successours for euer in pure and perpetuall Almes, or in franke Almes, in these two cases the tenements should bee holden in franke Almoigne. The first fodiatió of franke almoigne.

By force of which tenure they that holde in franke Almoigne after this sort bee bound of

right before God, to make orisons & prayer, and to do other diuine seruices for the soules of their graūtors & feoffors, and for the soules of their heires which bee dead and for the prosperous estate of them & their heirs, whilest they be aliue. And because of right they bee bound to this deuine seruice, they be discharged by the law to do any other prophane or corporall seruice, as fealtie or such other like.

Tenant in frank almoign shall doe no fealty.

But neuertheless if such as holde their tenements in franke almoigne, doe omit & leaue vndone these deuine seruices whereunto they bee bound before God, the Lorde cannot distraine them, ne yet compell thē by any other meanes by the course of the common law, but the only remedy is to complaine of thē to their ordinary, who of right ought to compel such ecclesiastical persons to doe the deuine seruice due as aforesaid.

Tenant by deuine seruice.

But here yee shall note that if a Parson of a Church or any other Ecclesiasticall person did before the statutes of dissolution of abbeies, monasteries, &c. hold of the Lord by certain deuine seruice to be done, as to sing masse euery fryday in the weeke, or Placebo & derige, or to finde a priest to sing masse, or to distribute in almes C. pence to a hundreth mē at such a day, in all these cases if such diuine seruice be vndone, the Lord may very well distraine, because the seruice is put here in certaine.

Distresse for deuine seruice.

Now as I said before that if in olde time a man did enfeoffe such ecclesiasticall person after such sort hee should hold his lands in franke almoigne. But at this day it is otherwise, for by the reason of the estatute called, Quia emptores terrarum,

terrarum, Weſtmin. 3. cap. 1. No man can alien ne graunt landes or tenements in fee ſimple, to hold of himſelfe, ſo that now if a man being ſeaſed of lands in fee ſimple graunteth the ſame by licence to an Eccleſiaſticall perſon in franke almoigne, theſe words franke almoigne be voide, and the eccleſiaſticall perſon ſhall hold them immediatly of the Lord of the feoffor by the ſame ſeruices that the feoffor held, ſo that no man can hold in franke almoigne but by force of a grant made before the ſaid Statute, onely the Kinges Maieſtie excepted, for hee is out of the compaſſe of the Statute.

Finally ye ſhal note that wheras a man holdeth in franke almoigne, his Lord is bound by the law to acquite him of all manner of ſeruice that any other Lorde can haue or demaund out of the ſaid landes, ſo that if he doth not acquite him, but ſuffer him to be diſtreined, then he ſhall haue againſt his Lord a certaine Writ, called a Writ of meſne, and ſhall recouer againſt him his damages, and coſtes of his ſuite. VVrit of meſne.

Of Burgage. Chap. 33.

A Tenure in Burgage, is where an auncient borough is, of which the king is lord, and they which haue tenements within the ſame borough hold the ſame of the king paying a certaine yerely rent, which tenure in effect is but Socage tenure. Likewiſe it is, where as any other Lorde Spirituall or Temporall is Lord of ſuch borough. Socage tenure

Here ye ſhall note that for the moſt part ſuch auncient Boroughs and Townes haue diuers cuſtomes and vſages which other Townes Cuſtome.

haue not. For some boroughes haue a custome that the youngest sonne shall inherite before the eldest, which custome is called commonly borough English.

Dower by custome.

Also in some borough by the custome, the woman shall haue for her dowry all the lands and tenements whereof her husband was seised at any time during the matrimony and couerture.

Deuise by custome of borough.

Moreouer in some boroughes a man may bequeath or deuise his landes or tenements by testament at the time of his death, and by force of such deuise or legacie, hee to whom the bequest is made after the death of the testator which made such testament, may by force of this auncient custome enter into the landes so to him bequeathed or deuised, without any liuery of seasen to him made, or further ceremony of law.

Howbeit, how & in what manner a man may at this day deuise his lands by his last will and testament by force of a certaine new Statute, it shalbe hereafter declared.

Diuers other customes in England there be contrary to the course of the common law, which if they be any thing probable, and may stand with reason are good & effectuall notwithstanding they be against the common law.

And note that no custome is allowable, but such custome as hath beene vsed by title, or prescription or time out of minde.

Of Villenage, or bond seruice. Chap. 34.

A Tenant in Villenage is properly when a Villaine, that is to say, a Bondman holdeth of his Lorde, whose Bondman he

he is, certaine lands or tenements, according to the custome of the manour, or otherwise at the will of his Lord, & to do his Lord villaine seruice, as for to beare and to carry the dunge of his Lords, out of the Citie, or out of his Lords manour, and to lay it vpon the demeane landes of the Lord, or to doe such like seruice and villaines seruice. Howbeit, freemen in some places holde their tenements and landes of their Lords by custome, by such sort of seruice, and their tenure is called tenure in villenage, and yet they themselues be no villaines, ne of seruile condition, but free men. For the land holden in villenage, maketh not the tenant a villaine, but contrarywise a villaine may make free land to be villaine land vnto his Lord. As if a villaine purchaseth land in fee simple, or fee taile, the Lord of the villaine may enter into the land so purchased by his bondman, and put him and his heires out for euer, and this done, the Lord if he will may lease the same land to his villaine, to hold of him in villenage.

And heere yee shall vnderstand, that seruitude or villenage, is the ordinance not of the law of nature, but of that law, which is called Ius gentium, by which a man is made subiect contrarie to nature, vnto an other mans dominion. For he that is a villaine or bondman, eyther he is so by title of prescription, that is to say, he and his auncestours haue beene villaines time out of minde, or else he is a villaine by his owne confession in some court of record, so that all villaines eyther they be borne villaines, or else they bee made so. They be

borne villaines, when their father being a bond man himselfe, begetteth them in lawfull wedlocke, either of a free woman, or of a bond woman, for so that the father be bond, the issue of him lawfully begotten must needes be bond by the Lawes of England, having no regard to the condition of the mother, whereas in the ciuill Law of the Romanes it is cleane contrary, for there, pars sequitur ventrem, that is to say, the seruitude or bondage of the mother maketh the child bond, and not the bondage of the father.

Bastard. Howbeit, the bastard sonne of a bond man shall not be bond, and the reason is, because a bastard is Nullius filius in the law, that is to say, no mans sonne.

They be made bondmen or villaines two wayes, either by their owne proper act, as when a free person being of full age, will come into a Court of record, and there confesseth himselfe bond to an other man.

Or else by the Lawes of Armes called Ius gentium, as when a man is taken prisoner in warres, and is compelled to serue and become the thrall and bondman of him that tooke him, the law calleth such a person a villaine, that is to say, a slaue and thrall,

Definition of Villaines. And ye shall note, that villaines be properly called in Latin Serui, because that when they be taken in warre, the Captaines be wont not to kill them, but to sell them, and so to saue their liues, so that they be called Serui à seruando, that is to say, of seruing. They be called Mancipia, à manu capiendo, because that they be taken by hand and power of their enemies.

Now

Now as I said by the lawe of nature, we are all borne free, but after that by the law of Gentilitie, seruitude or bondage did presse and inuade the world, then insued the benefite of Manumission. Manumission is, quasi de manu emissio, that is to say, a giuing out of the hand or power. For so long as a man is in bondage and seruitude, he is subiect to the hand & power of an other, and when he is manumissed, he is made free, and deliuered from the said power, so that a Manumission is to say, a writing testifying that the Lord hath infranchised his villain, and all his offspring and sequell. Manumission.

Also if the Lord maketh to his bondman an Obligation of a certaine summe of money, or graunteth to him by his deede an annuitie or yerely pension, or leaseth to him by deed lands or tenements for terme of yeares, any of these acts do implie an infranchisement.

Likewise, if the Lord maketh a feoffement to his villaine, and maketh vnto him liuerie of seisin, this also is an infranchisement and secrete Manumission. Briefly to speake, wheresoeuer the Lord compelleth his villaine by the course of the Law to doe that thing, that he might be otherwise inforce him to do, or to suffer, without the authoritie and compulsion of the law, he doth by implication infranchise his villaine, as if the Lord will bring against his villaine an action of Det, an action of Accompt, of Couenant, or of Trespas, these and such like be in the eye of the Law infranchisements & Manumissions, because that the Lord in all these cases may haue the effect & purpose of his suite, that What actes maketh Manumission in Law.

Causes of infranchisement

that is to say, the goods, cattels, and correction of his bondman, without the compulsion of that law, euen by his owne proper power and authoritie which he hath vpon his villaine. But if the Lord doth sue his villaine by an appeal of felonie, the villaine being lawfully indicted of the same before, this is no tacite manumission or infranchisement, for the Lord though he haue power to beate his villaine, and to spoyle him of his goods, yet he cannot by the Law of this Realme put him to death.

Yee shall also vnderstand, that if a mans bondman purchase landes, or acquire and get vnto him any other thing, the Lord may forthwith enter and seise the same into his owne handes. Wherefore if the Lord will bring against his villaine a Præcipe quod reddat, by which he demaundeth against his villaine any landes or tenements, this implieth an infranchisement, forasmuch as he bindeth himselfe to the prescript and authoritie of the law, whereas he might vse his owne authoritie by entring and seising the said lands.

Finally, yee shall marke, that some villaines be called villaines in grosse, and other some be called villaines regardant. In grosse be they of which the Lord is severally seised, and not by reason of any lordship or manor, but they be called regardant which do belong to a manor, of which the Lord is seised, and the said villaines haue been regardant, that is to say, expectant & attendant time out of mind to the Lord of the said manour, in doing vnto him such seruices as to a Villaine appertaineth.

Of

Of auncient demeſne. Chap. 35.

THere is alſo a certaine kinde of tenure which is called auncient demeſne, & thoſe tenaunts which holde by their ſeruice, be freeholders, and by charter, and not by copie or court Roll, or by the verge after the cuſtome of the manor, at the will of the Lord. And theſe tenants be ſuch as holde of thoſe Manors which were S. Edwards the king or which were in the hands of king William the Conquerour, & theſe manors be called the ancient demeſnes of the king, or the ancient demeſnes of the crowne of England. And to ſuch tenants which hold of ſuch manors bee many & diuers liberties giuen and graunted by the law, as to bee quite of toll and paſſage, and ſuch like impoſitions, which be demaunded of men for their goods and cattels, ſold or bought in faires & markets by them, alſo to be quite and free of taxe & tallage granted by Parliament, except that the Kings Maieſty doe taxe auncient demeſne as to him onely appertaineth, when hee thinketh good for great & vrgent conſiderations. Tenants alſo of auncient demeſne ought to bee quite of payments to the expences and charges of the Knights which come to the Parliament, alſo they ought not to be impanelled nor put in iuries, and enqueſtes in the countrey, out of their manors or ſeignory of auncient demeſne, for the landes which they hold of ſuch manor, vnles they haue other lands at the common law, for which they ought to bee charged. And if ſuch tenaunts or any of them

which

which holde of the Manor of auncient demesne be distrained to do vnto their Lord other seruices or customes then they or their auncestours haue vsed to doe, then may they sue a certaine Writ called a Monstraverunt, directed to the Lord, commanding him that he distraine them not for to doe other seruice or customes then they haue beene accustomed to doe.

VVrit of Monstrauerūt.

And for further knowledge hereof, yee shall vnderstand ỹ in the Eschequer there is a booke called domesday, which booke was made in the time of the said Saint Edward. And all the lands that were in the seisin, & in the handes of the said S. Edward at the time of the making of the said booke be auncient demeane.

But the lands which thē were in other mens hands though they be written in the said booke be franke fee and no auncient demesne.

Franke fee.

Finally it is to be noted, that tenants of auncient demesne shall not bee impleaded for their said lāds out of the manor wherof they so hold, and if they be, they may shew the matter & abate the writ. But if they once answere to the Writ and iudgment giuen, then the lands haue lost the nature and benefit of auncient demesne, and are become franke fee, that is to say, pleadable at the Common law for euermore. And thus haue we spoken of the diuersitie of tenures.

Abatement of awrit.

Of Rents. Chap. 36.

FOrasmuch as vppon euerie tenure there is commonly reserued one rent or other, therefore I thinke it good somewhat to treate of Rents. But ye must vnderstand that there be sundry

kindes of rents. There is one kind of rent which is called Rent seruice. Another which is called Charge, and the third which is named in French Rent secke, that is to say, in latine Redditus siccus, a drie rent. Now rent seruice is so called because it is knit to the tenure, and is as it were a seruice wherby a mã holdeth his lands or tenements, or at the least way when the rents be vnseuerably coupled & knit with the seruice, as for an example, where the tenant holdeth his land of the king, or of any other lord by fealty & by certaine rent, or by homage, fealty, & by certaine rent, or by any other sorts of seruices & by certain rent, this rent is called rent seruice. And here ye shall note that if this rent seruice be at any time when it ought to be paide, behinde and vnpaid, the Lord of whom the land or tenement is so holden, whether it be in fee simple, fee tail, for terme of life, for yeeres, or at will, may of common right enter and distreine for the rent, though there bee no mention at all, ne cause of distresse put in the deed or lease. I said before that the nature of this rent seruice is to bee coupled and knit to the tenure. For where no tenure is, there can be no rent seruice. And therefore if at this day I be seased of landes of fee simple, and make a deede of feoffement of the same to another in fee simple, reseruing by the same deed a rent, this can be called no rent seruice, because there can bee now no tenure betweene the feoffour and the feoffee. Otherwise it is of feoffements in fee simple made before the Statute of Westminster the third, cap. 1. called Quia emptores terrarum. For before the making

Diuision of rent seruice.

Distresse of commõ right.

making of that ſtatute, if a mā had made a feoffment in fee ſimple, reſeruing to him a certaine rent, yet though it had beene without deede, here had bin begun & created a new tenure betweene the feoffor and the feoffee, and the feoffee ſhould haue holden of the feoffor, who by vertue of the ſame might of commō right haue diſtreined for ſuch rent. But at this day by force of ẏ ſaid act, there can bee no ſuch holding or tenure created or begun, & conſequently no rent ſeruice can be at this day reſerued vpon any gift in fee ſimple, except it be in the Kings caſe, who being chiefe Lord of all, euer might and may, giue lands to be holdē of him. Thus ye ſee, that at this day, no ſubiect cā reſerue any rent ſeruice vnto him vnles the reuerſion of the lands or tenements that he ſhall grant, be ſtill in him, as where he granteth them in fee taile, or maketh but a Leaſe for terme of life, or for certaine yeres, or els at will.

For in all theſe caſes the reuerſion of the fee ſimple remaineth ſtill in him, and therefore if here be any rent reſerued it is to be called a rent ſeruice, and is of common right diſtreinable though there be no clauſe of diſtreſſe in the deed of feoffement or leaſe.

But here ye wil aſke me, when in the caſe before remembred a man at this day giueth cleane away the land or tenement from himſelfe in fee ſimple, ſo that there is no maner of reuerſion of the ſame remaining in him at all, & yet neuertheleſſe reſerueth vnto him by his deede a certaine rent, what maner of rent ſhall this be called: I anſwere, if there bee in the deede indented any clauſe of diſtreſſe, that is, that if the rent bee behinde

hind vnpayed, it shall be lawfull for the feoffour to enter, & to distraine, it is called a rent charge, for as much as the land is charged therewith, but how? of common right, no, but only by vertue and force of the writting. But one thother side, if there be no such clause of distresse put in the Indenture, then the rent so reserued shal be called a rent secke. Charge.

Likewise, if a man that is seised of certaine lands, will graunt eyther by Indenture, or by deed Poll, that is to say, single and not indented, a yeerely rent out of the same landes to an other, whether it be in fee simple, fee taile, for terme of lyfe, for yeeres, or at will, with clause of distres, then this rent is called a rent charge, & he to whom such rent is graunted, may for default of payment thereof enter & distraine. But contrary if the graunt be made without any such clause of distres, it is called a rent secke, that is to say, a drie rent, because he cannot come to it, in case it be demed by way of distres, in so much that if he were neuer seised of it, he is by the course of the common law without remedy. Otherwise it is of a rent charge, for here, he to whom the graunt is made when the rent is behind, may chuse whether he will sue a writt of Annuitie against the graunter, or distreine for the rent behind, & retaine the distres, till the time he be paied accordingly. But he cannot haue both remedies together, but must take him to the one, for if he once recouer by a writ of Annuity, then is the land discharged. And if he sue not his writ of Annuitie, but distraine for the arrerages, and the tenant sueth a repleuin, whereupon the other Annuitie.

auoweth

auoweth the taking of the distres in court of record, then is the land charged, & the person of the grauntor discharged of the action of annuitie.

Ropple.

Yee shall also vnderstand, that if a man will that an other shall haue a rent charge comming out of his land, and yet will not that his person shall be by any meanes charged by writ of annuitie, he may then haue such clause in the end of his deed. Prouiso quod præsens scriptum, nec quicquam in eo contentũ vllo pacto se extendat ad onerandum personam meam, per breue seu actionem de annuitate, sed tantummodo valeat ad onerandum terras, fundos, & tenementa mea, de annuo reddit u prædicto. If this or such like clause be added, then the land is charged, & the person of the grauntour is discharged.

Prouiso.

Also if a man will make a deed of graunt in this wise, that if Iohn at Stile be not yearely paied at the feast of Christmas for terme of his life xx. shillinges sterling, that then it shall be lawfull for the said Iohn at Stile, to distraine for it in the manor of Dale, this is a good rent charge, because the manor is charged with the rent by way of distres, & yet neuertheles in this case the person of him that made such deede is discharged of any action of annuitie, forasmuch as he graunted not by his deed any annuitie to the said Iohn at Stile, but onely graunted that he might distraine for such yeerely rent.

Furthermore ye shall note, that if a man hath a rent charge to him and to his heires comming out of certaine landes, and doth purchase any parcell of these landes, to him and to his heires, in this case the whole rent charge is

quen-

quenched and gone, and the annuitie also, the cause is this, that a rent charge cannot be in such case apporcioned. Otherwise it is of a rent seruice, as for example, if one which hath a rent seruice of xx. d. by yeare, doth purchase parcell of the land, out of which this yearely rent of xx. d. is comming, this shall not extinguish or drowne the whole rent, but for the parcell onely. For rent seruice in such case may very well be apporcioned and rated according to the value of the land. Yet there be some sorts of rents seruices, which in no wise can be apporcioned. As where a tenant holdeth his land of his lord by the seruice, to render to his Lord yearely at such a feast, an horse lading of gold, a red rose, a gyliuer, or such like, if in this case the Lord doth purchase parcell of the land thus of him holden, this seruice is gone, because such seruice cannot be seuered and apporcioned. Also Escuage is a seruice that may be verie well apporcioned, according to the difference and rate of the land.

Extinguishment.

Rent seruice cannot be apporcioned.

But where any land is holden by homage and fealtie, if the Lord purchase parcell of the land, yet he shall haue his homage and fealtie still of his tenant.

Ye shall marke also, that if a man maketh a lease of lands to an other for terme of life, reseruing to him certaine rent, if in this case he grauteth that rent to John at Stile, sauing to himselfe the reuersion of the said land, this rent is but rent secke, because John at Stile that hath the rent, hath nothing in reuersion of the land.

But if he graunteth the reuersion of the land

to Iohn at Noke for terme of life, and the tenant attorneth accordingly, then hath Iohn at Noke the rent as rent seruice, because he hath the reuersion for terme of his life.

Rent is incident to a reuersion.

Likewise it is, if a man giueth lands or tenements in tayle, reseruing to him & to his heires certaine rent, or maketh a lease of the land for terme of life, reseruing certain rent, if he grauneth the reuersion to an other, and the tenant atturneth accordingly, the whole rent and seruice shall passe by this word Reuersion, because the rent and seruice in such case be incident to the reuersion, and doe passe by the graunt of the reuersion. But if he had graunted the rent onely, it had been a rent secke.

What remedie a man hath to recouer his Rent when it is behind. Chap. 37.

I Shewed you before, that for a rent seruice if it be behind, ye may distraine in the ground, euen of common right, though there be no such clause of distresse mentioned in the deede of feoffement, graunt, or lease.

Also for a rent charge ye may distrain, or bring your writ of annuitie, at your choise and election, as before is declared. But of a rent secke if yee were neuer seised of it, nor of any parcell thereof, yee be without remedy by course of the common Law, for yee cannot distraine for it, nor yet bring your writ of annuitie, but if yee were once seised of it, or of parcell thereof, & it is eftsoones behind, then your remedy shal be this, yee must go either by your selfe, or by your deputie

putie to the land or tenement out of which the rent is comming, and there demaund the arrerages of the rent, which if the tenaunt denie to pay, this denialL is disseisin of the rent. Also if the tenant be not then ready to pay it, this counteruaileth a denialL, which is a disseisin. Disseisin of rent secke.

Moreouer, if neyther the tenaunt nor no other man be remaining vpon the ground to pay the rent when yee demaund the arrerages, this also is a denialL in the law, and is in very deed a disseisin. And for these disseisins ye may haue an assise of Nouel disseisin agaynst the tenaunt and shall recouer seisin of the rent, and the arrerages and your dammages and costes of your Writ, and of your plee. And if after such recouerte and execution had, the rent bee againe at an other time denyed you, then yee may haue a Writ of Redisseisin and shall recouer your double damages &c. Assise. In redisseisin double damages.

It shalbe therfore wisdome for a man when a rent is graunted by any person vnto him, to take of the tenaunt of the lande a peme or an halfe pennie in name of seisin of the rent, and then if at the next day of payment the rent be denied him, he may haue an assise of Nouel disseisin. And ye shall note, that there be three causes of disseisin of rent seruice, that is to wit, rescous, repleuin, and inclosure. Rescous is when the Lord vpon the land holden of him distraineth for his rent behinde, and the distresse bee rescued from him, or if the Lord come vpon the land to distraine, and the tenaunt or any other man for him will not suffer him, that is called Rescous. Three causes of disseisin of rent seruice.

Repleuin.

Repleuin is, when the Lord hath distrained and repleuin is made of the distresse by writ or by plaint.

Encloſuer.

Encloſure is where landes or tenements be ſo incloſed, that the Lord cannot come within the lands or tenements for to distreine. And the chiefe cauſe why ſuch thinges ſo made be diſſeiſin to the Lord, is forasmuch as the lord is by this way disturbed of the meane & remedy, whereby hee ought to come and haue his rent, that is to wit, by distresse.

Foure cauſes of diſſeiſin of rent charge.

And there be foure cauſes of diſſeiſin of rent charge, that is to wit, reſcous, repleuin, encloſuer & denier. For denier, or deniall, is aſwell a diſſeiſin of a rēt charge, as it is of rent ſeck. Finally ye ſhall vnderſtand, ỹ there be two cauſes of diſſeiſin of rent ſecke, ỹ is deniall & incloſuer.

And two of rent ſecke.

And it ſeemeth that there is yet another cauſe of diſſeiſin of all the three rents aforeſaid, that is to wit, this, when the Lord commeth to the land holden of him, or whē he that hath a rent charge or a rent ſecke, commeth to the land to diſtraine for the rent behinde, or to demaund the rent, and the tenant hearing this, encountreth him, & foreſtalleth him the way with force and armes, and manaſeth him in ſuch ſort, as hee dare not come to the ground for to diſtrain for his rent behind for feare of death or mutilatiō of his members: This is a diſſeiſin becauſe the partie is diſturbed of his meane, and lawfull remedie whereby he ought to come to his rent.

Finally, yee ſhall obſerue and marke, that by an act of Parliament made in the xxii. yeare of our Soueraigne Lord K. Henrie the eight, it is lawfull for the executours and adminiſtra-

tours

tours of tenaunts in fee ſimple, tenaunts in fee taile, tenants for terme of life, of rent ſeruices, rent charge, rent ſeckes, and of fee fermes, for arrerages of ſuch rents as were due vnto their teſtatours in their liues, eyther to diſtreine for the ſame, or at their election to bring an action of debt, except in ſuch lordſhips in Wales or in the Marches thereof, whereas the tenants haue vſed time out of minde, to pay vnto euery Lord at his firſt entrie into the Lordſhip any ſumme of money, for the redemption of al maner of outcries and penalties incurred at any time before their Lords entrie. Diſtreſſe or action of debt.

Alſo by force of the ſaid act the huſband which was ſeiſed in the right of his wife, may after the death of his wife eyther diſtreine or bring an action of debt for the arrerages of ſuch rents as were due and vnpaid in her life.

Likewiſe it is of him that hath a rent for term of an other mans life, if hee for terme of whoſe life hee hath the rent dieth, yet by vertue of the ſaid act he or his executors and adminiſtrators, may eyther diſtraine or bring an action of debt for the arrerages due before the death of him, for terme of whoſe life he had the rent.

How auowries ought to be made of rents, and ſeruices, enacted An. 21. H. 8. Chap. 38.

WHere any lands be holden of any perſon by rents, cuſtomes, or ſeruices, if the Lorde diſtraine vppon the ſame lands for any ſuch rents, cuſtomes, or ſeruices, and Repleuin thereof bee ſued, the Lorde may

auow, or his bayliffe or seruant may make conisance or iustifie the taking vpon the same landes, as within his fee and seignorie, alledging in the said auowrie, conisance or iustification, the same landes to be holden of him without naming any person certaine to be tenant of the same, & without making any auowrie iustification or conisance vpon any person certaine. And likewise vpon euery writ sued of the second deliuerance. And they that make any such auowry, iustification, or conisance if the same auowrie, conisance, or iustification be found for them, or the plaintife be non suite, or otherwise barred, then they shall recouer their whole damages and costes.

Also the said plaintifes and defendants shall haue like pleis, and one aide yter (pleis of disclaimer only except) as they might haue had before the making of this act.

Pleis in auowrie.

Also such persons as by the common law may ioyne to the plaintife or defendant in the saide writs of Replegiare or second deliuerance, as well without proces as by proces, shall from henceforth also in this case come vnto them as well without processe as by processe, and haue like pleas & like aduantages in all things (disclaimer only except) as they might haue by the common law before this act.

An act for the assurance of fermors, made An. 32. H. 8. Chap. 39.

ALl Leases hereafter to bee made of any landes, or other hereditaments, by writing indented vnder seale, for terme of yeares, or for terme of life, by any persons being of

of the age of xxj. yeares, hauing any estate of inheritance, either in fee simple, or in fee tayle, in their owne right, or in the right of their churches, or wiues, or iointly with their wiues, shal be good and effectuall against the lessours, their wiues, heires, and successors, according to the estate comprised in such Indenture of lease.

Prouided that this act shall neither extende to any leases to be made of any lands, or hereditaments, being in the hands of any fermours, by vertue of any old lease, vnlesse the same olde lease be expired, surrendred, or ended, within one yeare after the making of the new lease, nor yet to any graunt to be made of the reuersion of any lands or hereditaments, nor to any lease of such lands or hereditaments, as haue not commonly been letten to farme by the space of xx. yeares next before such lease thereof made, nor to any lease to be made without impeachment of wast, nor to any leale to be made aboue the number of xxi. yeares, or three liues at the most, from the day of the making therof. And that vpō such leale be reserued yearely during the same, due & paiable to the lessors, their heires & successors, to whom the land should haue come after the death of the successors, & to whom the reuersion therof shall pertaine, according to their estates & interestes, so much yerely rent or more, as hath been accustomably yeelded for ỹ same, within xx. yeres next before such leases, and that he to whom the reuersion thereof shall pertaine, after the death of such lessors, or their heires, shall haue such like remedy & aduantage against their fermours therof, their executours and assignes, as the

Surrender of the old lease.

lesse or himselfe should haue had.

The wife shall be party to the lease.

Prouided also, that the wife be made partie to euery such lease as shall be made by her husband, of any lands being the inheritance of the wife, and that euery such lease be made by Indenture in the name of the husband & his wife, and she to seale thereunto. And that the rent be reserued to the husband & wife, and to the heires of the wife, according to her state of inheritance therein. And that the husband shall in no wise alien, discharge, graunt, or giue away the same rent reserued, nor any part thereof, longer then during the couerture, without it be by fine leuied by the said husband and wife.

Prouided furthermore, that this act extende not to giue libertie or power to any persons to take any moe fermes, leases, or taking of any lands, or other hereditaments, then they might haue done before the making of this act: nor yet extend to giue any libertie to any Parson or Vicar of any church or vicarage, for to make any lease or graunt of any of their messuages, lands, tenements, tythes, profits, or hereditaments, belonging to their Churches or vicarages, otherwise then they might haue done before the making hereof, Anno 32. H. 8.

What graunt by a Corporation is good.

It is furthermore enacted, that the graunt, lease, or gift, or election, of the gouernour or ruler of any hospitall, colledge, deanry, or other Corporation, with the assent of the more part of such of the same as haue voice thereunto, shall be good and effectuall, any rule or statute made by any founder to the contrarie notwithstanding.

Of

Of falsifying of recoueries by Fermours, enacted Anno 21. H. 8. Chap. 40.

ALL Fermours or Lessees for terme of yeres may falsifie for their terme onely recoueries had by fayned titles, as well as tenant in free hold. And the same fermours, their executours and assignes shall intoy their said termes, according to their leases against such recoueries, euen as if none such had been suffered. In which case, neuertheless the recouerer, after such recouerie had, shall haue like remedie against the fermours, by auowry, or action of debt, for rents and seruices reserued vpon the same leases, being due afore the same recoueries, and like actions for wast done after the same recoueries, as the lessour might haue had, if no such recouerie had been had. Furthermore, no Statute staple, statute Marchant, nor execution by Elegit, shall be auoyded by any such fayned recouerie, but like remedie shall be had to auoyde and falsifie the said recouerie, as is ordayned for the fermour or lesser for terme of yeeres.

Auowrie or action of debt.

Of Tythes, and how they shall be recouered, enacted Anno 32. H. 8. Chap. 41.

ALL persons shall truely pay their Tythes, and Offerings, according to the lawfull customes and vsages of Parishes and places where such Tythes or dueties be due. And if they doe wilfully withhold any parcell of them, the partie whether he be ecclesiasticall, or lay,

lay, that ſhould haue them, may conuent ſuch perſons before the Ordinarie, his Commiſſary, or other competent Miniſter or Iudge of the place where ſuch wrong ſhall be done, according to the eccleſiaſticall Lawes. And in euery ſuch cauſe or ſuite, the ſame Ordinary or Iudge hauing the parties, or their procurator before him, ſhall proceede to the determination thereof ordinarily or ſummarily, according to the courſe of the ſaid Lawes, and thereupon ſhall giue ſentence according.

And in caſe any of the parties of any matter concerning that ſuit doe appeal from the ſentence & diffinitiue iudgement of the ſaid Iudge, then the ſame Iudge forthwith vpon appellation made, ſhall adiudge to the other partie the reaſonable coſtes of his ſuite, and ſhall compell the ſame partie appellant, to pay the ſame by compulſary proceſſe & cenſure of the ſaid lawes, taking ſuertie of the other partie to whom ſuch coſtes ſhall be adiudged, to reſtore the ſame to the appellant, if afterward the principall cauſe of that ſuit of appeal ſhall be adiudged againſt him. And ſo euery Iudge eccleſiaſticall, ſhall iudge coſtes to the other party vpon euery appeale to be made in any ſuite or cauſe of ſubtraction or detention of any tythes or offring, or in any other ſuite to be made concerning duties of ſuch tythes or offrings.

And if any perſons after ſuch ſentence giuen againſt them, ſhall obſtinately refuſe to pay their tythes or duties, or ſuch ſummes of money ſo adiudged wherein they be condemned, then two Iuſtices of the peace of the ſame Shire, whereof

whereof one to be of the Quorum, ſhall vppon certificat or complaint to them made in writing by the Iudge that gaue the ſentence, cauſe them to be attached and committed to the next Iaile, there to remaine without baile or mainprize, till they ſhall haue found ſufficient ſuerties to bee bound by recognizance or otherwiſe before the ſame Iuſtices to the kinges vſe for the performance of the ſaid iudgement.

Prouided, that no perſon ſhall bee ſued or otherwiſe compelled to pay any tythes for any landes, tenements, or hereditaments, which by the lawes of this realme are diſcharged, or not chargeable with the payment of any ſuch tithes.

Alſo this act ſhall in no wiſe binde the inhabitants of London, and Suburbs of the ſame, to pay their tythes & offerings within the ſame Citie and Suburbs, otherwiſe then they ſhould haue done before.

Furthermore if any hauing an inheritaunce, freehold, terme or intereſt, in any perſonage, vicarage, portion, pencion, tythes, oblations or other Eccleſiaſticall profit made or to bee made temporall, or admitted to be in temporall hands by the lawes or ſtatutes of this realme, be diſſeiſed or otherwiſe put from the ſame, or any other perſon claiming to haue intereſt therein, the perſon ſo diſſeiſed or wrongfully put from his ſaid right or poſſeſſion, his heire, wife, and other to whom ſuch wrong ſhalbe done, may haue remedie in the Kings temporall Courts, as the caſe ſhal require for the recouery thereof by writs originall of Præcipe qd' reddat, aſſiſe or nouel diſſeiſin, Mortdanceſter. Quod ei deforceat, writs

of

of dower, or other writs originall to be graunted in the chancery, of euery such parsonage, vicarage, portion, pension, or other profit ecclesiastical, according to the nature of the suit therof. And writs of couenant & other writs for fines to be leuied, & all other assurances to be made of any such parsonage or profits ecclesiastical, shal be deuised & granted there, like as hath bin vsed for fines to be leuied, and assurance to be had of lands or other hereditaments, & all iudgements giuen vpon such writs originall granted for any the premisses, and al fines leuied & knowledged in any of the kings said courts therof, shall be of like force as iudgement giuen, and fines leuied of lands, tenements and hereditaments.

Of Mortuaries, enacted An. 21. H. 8. Chap. 42.

NO person spirituall, their fermors or bayliffes, shall cal any person before any iudge Spirituall, for the recouery of any Mortuaries, more then is hereafter mentioned, vpon paine to forfeit for euery time, so much in value as they shall take aboue the summe here limited, and ouer that xl. s. to the partie grieued, for which hee shall haue an action of debt by writ, bill, or information, wherein no wager of law, essoine, nor protection, shall be allowed.

First no mortuarie shalbe taken of any which at his death hath in moueable goods vnder the value of ten marks. Also no mortuarie shall be taken but onely where mortuaries haue beene vsed to be paide, and there after the forme hereafter mentioned. Nor in no mo places but one, that

that is to wit, there where his moſt abiding is, and there but one. For no perſon ſhall take for the Mortuary of any perſon being at his death of the vaine of ten markes aboue his debts paid and vnder xxx. li. aboue iii.s. iiii.d. And of the value of xxx. li. and vnder xl. not aboue vi. s. viii.d. And of the value of lx.li. or aboue, of any ſumme what ſoeuer it be, not aboue x.s.

Alſo no mortuarie ſhall be aſked nor paid for any woman couert baron, or childe, or any perſon not keeping houſe, or for any wayfaring man, but the mortuaries of ſuch waifaring men, be anſwerable in that place where they had their moſt dwelling at the time of their death.

Neuertheles ſuch ſpirituall perſon may take any thing, which ſhalbe diſpoſed or bequeathed to him, or to the high aulter of the Church.

Alſo nothing ſhalbe taken for Mortuarie in Wales, nor in the Marches of the ſame, nor in Calis or Barwick, or the marches of the ſame, but only in ſuch places of the ſame, where Mortuaries haue bin accuſtomed to be paid, & there but only after the forme aboue ſpecified. Prouided that the Biſhops of Bangor, Landafe, S. Dauids, & S. Aſſe, & the Archdeacon of Cheſter, may take ſuch Mortuaries of the Prieſtes within their dioces & iuriſdictions, as heretofore haue bin accuſtomed Prouided alſo that in ſuch places where Mortuaries haue bin accuſtomed to be taken of leſſe value, none ſhalbe compelled to pay any other mortuary or more for any mortuary, then hath bin accuſtomed, nor no mortuary there ſhalbe demanded of any perſon exempt by this act vpon paine afore limited.

Of

Chap. 43.

IT is called a discontinuance by the lawes of England, where he that hath the possession of lands or tenements for the time present, and yet not having the fee simple in himselfe, nor in his owne right onely, maketh an alienation of the same to another by reason whereof he that should haue them after him, and which then hath right vnto them cannot enter, but is driuen to his remedie by way of action, in such wise that the said landes bee not vtterly shifted and gone from such person or persons as haue right vnto them, but be all onely discontinued for a time, till the person which after the death of such discontinuer hath right vnto them, doe continue and bring them home againe, not by entrie, but by suite and way of action. As for example, a tenaunt in tayle of certaine landes doth enfeoffe another in the same, in fee simple or fee tayle, and hath issue and dyeth, his issue cannot enter into the lands though he hath title and right vnto them, but is put to his action, which is called a Formedon in the descender. And if such tenaunt entayle which maketh such a feoffement, hath no issue at time of his death, it is yet neuertheleſſe a discontinuance to him which is eyther in the reuerſion or in the remainder, ſo that neyther the one nor the other can enter, but be driuen to their action hee in the reuerſion to his Formedon in the reuerter, and he in the remainder to his Formedon in the remainder.

Formedon in the diſcender.

Formedon in the reuerter or remainder.

In like maner if a Biſhop doth alien landes which be parcell of his Biſhoprick and dyeth, this

this is a diſcontinuance of his ſucceſſor, foraſmuch as he cannot enter, but is driuen to his writ of Entre ſine aſſenſu Capituli.

Entre ſine aſſenſu Capituli.

Semblable, if a Deane be ſole ſeiſed of lands in the right of his Deanry, & maketh ſuch an alienation, this is a diſcontinuance to his ſucceſſour. Alſo if the Maſter of an hoſpitall alieneth any lands of his hoſpitall, that is a diſcontinuance, and his ſucceſſor cannot enter, but is put to his writ, De ingreſſu ſine aſſenſu confratrum, & ſororum.

Ingreſſu ſine aſſenſu confratrum, & ſororum.

But if a Parſon, or a Vicar of a Church, will alien any of his glebe landes to an other in fee ſimple, or fee tayle, and dieth, or reſigneth his benefice, this is no diſcontinuance to his ſucceſſour, but he may very well enter, notwithſtanding ſuch alienation made by his predeceſſour. And the higheſt writ that a Parſon can haue, if his predeceſſour hath alienedd his glebe land, or loſt it by default, or reddition, is a Iuris vtrum.

Reddition, that is voluntarie yeelding.

And furthermore note, that no tenant of ꝑ land can by his or their act, diſcontinue ꝑ right of him in the reuerſion, vnleſſe it be by feoffement with liuery & ſeiſin, or els by a releas with warranty.

And note, that ſuch things as paſſe by way of graunt by deede without liuerie and ſeiſin, can not be diſcontinued, as an aduowſon, cõmon, or a villaine in groſſe, reuerſion, rent charge, common for beaſtes certaine, and ſuch other like.

Alſo yee ſhall vnderſtand, that in the xxxij. yeare of king Henry the 8. it was enacted, that no fine, feoffement, or other act to be made or ſuffered by the huſband onely, of any landes or tenements, being the inheritance or freeholde of

his wife, during the coverture betweene them should be any discontinuance thereof, or be prejudiciall or hurtfull to the said wife, or to her heires, or to such as should have right, title, or interest to the same by the death of such wife, but that the same wife, and her heires, and such other to whom such right should appertaine after her decease, may then lawfully enter into all such landes and tenements, according to their rights and titles therein.

How recoveries by collusion against tenants for terme of life, is no discontinuance, enacted An. 32. H. 8. Chap. 44.

WHere diuers persons seised of landes and hereditaments, as tenants by the curtesie of England, or otherwise onely for terme of life or lives, have heretofore suffered other persons by agreement or couine betweene them had, to recouer the same against them in the kings court, by reason whereof, they to whom the reuersion or remainder thereof hath belonged, have after the deathes of such tenants been driuen to their actions for the recontinuance and obtayning of the said landes and tenements so recouered, and sometime have been cleerely disherited of the same: It is enacted, that all such recoueries hereafter to be had by agreement of the party, or by couine, or against any such particuler tenant of lands or hereditaments, where of he is, or hereafter shall be seised, as tenant by the curtesie of England, tenant in tayle after possibilitie of issue extinct;

or

or otherwise for terme of life, shall from hencefoorth as against such persons to whom the reuersion or remainder shall then appertaine, and against their heires and successours be clearely voyd. Prouided that this act extend not, to any person that shall by good title recouer any hereditaments without fraud or couine, against any such particuler tenant, by reason of any former right or title, nor yet to auoyde any recouerie to be had against any such particuler tenant, by the assent and agreement of those in the reuersion or remainder, so that such assent & agreement do appeare of record in the kings Court.

How wrongfull disseisin is no discent in the law, enacted Anno 32. H 8. Chap. 45.

Where diuers persons haue by strength, and without title entered into lands and tenements, and wrongfully disseised and dispossessed the rightfull owners & possessours thereof, and so being seised by disseisin, haue thereof dyed seised, by reason of which dying seised, the parties that were so disseised and dispossessed, or such other persons as before such discent might haue lawfully entred into the said lands & tenements, be thereby clearely excluded of their entrie into the land, and put to their action for their remedy and recouerie thereof: It is enacted, that the dying seised hereafter of any such disseisour, hauing no right or title therein, shall not be deemed any such discent in the law, as to take away the entrie of such persons or the heires, which at the time of the same discent had

good title of entrie into the ſame. Except that ſuch diſſeiſor hath had the peaceable poſſeſſion of his lands or tenements whereof he ſhall ſo die ſeiſed, by the ſpace of fiue yeres next after the diſſeiſin by him committed, without entrie or continuall claime, by ſuch as haue lawfull title thereunto.

The limitation of Preſcription, enacted An. 32. H. 8. Chap. 46.

NO perſon ſhall ſue or maintaine any writ of right, or make any title or claime to any landes, tenements, rents, annuities, commons, pencions, porcions, corrodies, or other hereditaments, of the poſſeſſion of his auncestours or predeceſſours, and declare any further ſeiſin or poſſeſſion of his auncestour or predeceſſour, but onely of the ſeiſin or poſſeſſion of his auncestour or predeceſſour, which haue been ſeiſed of the ſame within fortie yeares, next before the graft of the ſame writ, or next before the ſaid title or claime ſo to be ſued.

Limitation of 40. yeares.

Alſo, none ſhall ſue or maintaine any Aſſiſe of Mordauncestour, coſinage, ayle, writ of Entrie vpon diſſeiſin done to any of his auncestors or predeceſſors, or any other action poſſeſſary vpon the poſſeſſion of any of his auncestors or predeceſſors, for lands or hereditaments of further ſeiſin or poſſeſſion of them, but onely his ſeiſin or poſſeſſion which was ſeiſed therof within 50. yeares next before the graft of the original of the ſame writ. And none ſhall maintaine action for lands or other hereditamẽts vpon his own ſeiſin or poſſeſſion therein, aboue 30. yeares next before the graft of the original of the ſame writ.

Limitation of 50. yeares.

Limitation of 30. yeares.

Item

Item none ſhall make any auowrie or coniſance for a rent, ſuit, or ſeruice, & alledge any ſeiſin of the ſame in his auowrie or coniſaunce in poſſeſſion of his anceſtors or predeceſſors, or in his owne poſſeſſion, or in the poſſeſſion of any other, whoſe eſtate he ſhall claime to haue aboue 50. yeares next before the making of the ſaid auowrie or coniſance. Auowry.

Moreouer all Formedons in reuerter, Formedons in remainder, and Scire facias vppon fines of landes or other hereditaments to be ſued, ſhalbe taken within 50. yeeres next after the title of action fallen. And if any do ſue any of the ſaid actions or writs for lands or other hereditaments, or make any auowrie, coniſance, preſcription or claime for any rent, ſuit, ſeruice, or other hereditaments, and if hee proue that he or his anceſtors or predeceſſors were in actuall poſſeſſion or ſeaſon therein, at any time within the yeares before limitted, if the ſame be trauerſed or denyed by the partie plaintife, demaundant or auowant, or by the partie tenaunt or defendant, he and his heires ſhal from henceforth be vtterly barred for euer, of euery the ſaid writs, actions, auowries, coniſance, preſcriptiõ, title and claime hereafter to be ſued or made for the ſame lands or other the premiſſes, for which ſuch action, writ, auowrie, coniſaunce, title or claime hereafter ſhall be ſued or made. Barre.

Prouided, that all ſuch perſons which now haue any of the ſaide actions, writs, auowries, Scire facias, coniſaunce, preſcription, title, or clayme depending, or that hereafter ſhall ſue or bring anie of the ſaide writs, or actions, or make anie of the ſaid auowries, coniſaunces,

Whether eſtate ſhall take effect.

preſcription, titles, or claime at any time before the leaſt of the aſcention of our Lord which ſhal be in the yeere of our Lord, 1546. ſhall alledge this ſeaſon of their auncеſtors, or predeceſſors or their owne poſſeſſion & ſeaſon, & alſo haue all other like aduantage in the ſame writs, actions, auowries, conſiſances, preſcriptions & claimes, as they might haue had before the making of this Statute. Prouided alſo, that if any perſon be now within the age of xxi. yeeres, or couert baron, or in priſon, or out of this Realme, now hauing cauſe to bring any of the ſaid Writs, or actions, or to make any auowries, conſiſances, preſcriptions, or claimes, it ſhall be lawfull to ſuch perſon, to ſue or bring any of the ſaid actions, or to make any of the ſaid auowries, conſiſances, titles, or claimes, at any time within ſixe yeeres next after ſuch perſon now being within age, ſhall accomplith the age of xxi. yeres or now being couert baron, ſhall be ſole, or now being in priſon, ſhall be at their libertie, or now being out of this Realme, ſhall come and be within this Realme. And that euery ſuch perſon in their ſaid actions, auowries, conſiſances, titles or claimes, to be made ſued or commenced within the ſaid ſixe yeeres, ſhall alledge the ſeaſon of their auncеſtors, or predeceſſors, or of their owne poſſeſſion, or of the poſſeſſion of thoſe whoſe eſtate they ſhall then claime. And alſo within the ſame ſix yeres ſhall haue like aduantage in the ſame, as they might haue had before the making of this act.

Prouided alſo, that if the ſaid perſons now being within age, or couert baron, in priſon or

out of this realme, doe die within age, or being couert or in priſon, or out of this Realme or deceaſe within vi. yeeres next after they ſhall accomplish their full age, or ſhalbe at large within this Realme, or ſhall become ſole & no determination or iudgement had of ſuch title, actions, or rights ſo to thē accrewed, then the next heire of ſuch perſons ſhall enioy, like aduantage to ſue demaund, auowe, declare, or make their ſaid tytles, claymes or preſcriptions, within fiue yeeres next after the death of ſuch perſons, as the ſaid infant after his full age, or the ſaid woman couert after the death of her husband, or the ſaid perſon being out of this Realme after his repaire or comming into the ſame, or the ſaid perſon impriſoned after his enlargement and comming out of priſon, might haue had within fiue yeares then next enſuing by force of the prouiſion laſt before rehearſed.

Prouided alſo, that if any perſons before the ſaid feaſt of the Aſcention, ſtie any of the ſaid actions, or make any auowrie, title, or clayms, and the ſame happen by the death of any the parties thereunto, to be abated before iudgement or determination thereof had, then the ſaid perſons being demandants, or auowants, or making any ſuch conſiance, preſcription, title, or claime, being then aliue, and if not, then their next heires, may commence their action, and make their auowrie, conſiaunce or claime vpon the ſame matter within one yeere next after ſuch ſuit abated, and ſhall haue like aduauntage to ſue, demaunde, auowe, declare, or make their ſaid tytles, claymes, or preſcription within the

ſaid one yeare, as the demaundants in ſuch writ or ſuite abated, or as ſuch as did auow or make conſiance, tytle, clayme or preſcription, might haue enioyed in the former action or ſuite.

Attaint vpon falſe verdict.

Prouided furthermore, that if any falſe verdict hereafter be giuen in any of the ſaide actions, ſuites, auowries, preſcriptions, titles or claymes, then the partie grieued may haue his attaint vpon euery ſuch verdict, and the plaintife in the ſame attaint vpon iudgement for him giuen, ſhall haue like recouery, execution and other aduantage as hereafter hath bin vſed.

Of Fines. Chap. 47.

FInes haue their name, becauſe they make a finall end and determination of all ſuites, ſtrifes and debates betweene men. For the due keeping whereof, it was enacted in the fourth yeere of King Henrie the ſeauenth, that they muſt be ſolemnly before the Iuſtices of the common place, red̃e and proclaymed the ſame Terme, and three Termes next following the ingroſſement, at which time all the plees muſt ceaſe. And ſuch Fines ſhall bee a ſufficient barre and diſcharge againſt all perſons ſauing women that bee couert baron, if ſuch women bee not priuie to the ſame Fine, or ſuch as bee within age, in priſon, out of the Realme, or out of their right mindes. But theſe Fines ſhall not conclude ne barre all Straungers which haue right to enter or to haue action, if they come within fiue yeeres after ſuch Proclamati-

ons

ons made, or (in case the cause of action falleth vnto them, after the fine so duely leuied) if they come & commence their action and sute within fiue yeres next after such cause of action to them accrued. And they may sue against the takers of the profits. But if they that haue right thereto be within age, in prison, couert baron, or out of the realme, or not in their right memorie, then their title or entrie shall be saued vnto them till they be of full age, out of prison, discouert and sole, within the realme, or of right mind, and then within fiue yeares after, their action or entrie must be sued or made with effect.

Also by the said statute it shall be a good plea for all straungers to say, that they that were parties to the fine, nor none other to their vse, had any thing in the tenements or lands at the time of the leuying of the fine.

Furthermore, in the xxxij. yeare of this king, for auoyding of certaine doubes and ambiguities, it was enacted, that all fines, aswell heretofore leuied, as hereafter to be leuied, according to the said statute of Henry the vij. by any person of the full age of xxj. yeares, of any landes or other hereditaments, being before the fine leuied, in any wise tayled vnto him, or any of his auncestours, in possession, reuersion, remainder, or in vse, shall be immediatly after the same fine leuied, ingrossed, and proclamation made, a sufficient barre and discharge for euer, aswell against him, and his heyres, clayming the same onely by force of any such entayle, as against all other to their vse, so that the same fines bee not leuied to any woman

after the death of her husband, contrarie to the statute made the xj. yeare of Henry the seuenth, of landes and tenements of the inheritance or purchase of her husband, or of any of his auncestors giuen to her in dower, for terme of life, or in tatle, in vse, or in possession. Except also all fines leuied, or to be leuied, of any such landes or hereditaments by the owners thereof, by any speciall act of Parliament made sith the said fourth yeare of Henry the viij. be restrained from making any alienations, discontinuances, or other alienations of the same. Also of such lands as be now in suite and variance in any of the kinges Courts, or whereof any euidences be now in demaund in the Chauncery, or which be already recouered. Except also fines leuied, or to be leuied by any person, of lands or tenemẽts graunted to him, or to his auncestours in tayle, either by the kings letters patents, or by vertue of any act of Parliament, wherof the reuersion is in the king. And confirmed in the 34. yeare of king H. the 8.

Of Testaments or last Willes.

Chap. 48.

Diuision.

TEstamentum in Latine, is as much to say, as mentis testatio, that is, a declaration or witnessing of a mans minde. And there bee two sortes of Testaments. The one

Written Testament.

is called Testamentum scriptum, that is, a written Testament, or last Will by writing,

The testament nuncupatiue.

and the other is called Testamentum nuncupatiuum, a testament nuncupatiue, which is when a man doth expresse by mouth his last will and

and teſtament without writing, by calling before him certaine of his neyghbors, in whoſe preſence he doth ſignifie by words his laſt mind and will. And this for the moſt part men vſe to doe, when for feare of ſuddennes of death, they dare not abide the writing of their will. And this will (vnleſſe it be in certaine caſes) is as ſtrong and as ſure, as is a Teſtament or laſt will put in writing, and ſealed with the ſeale of the teſtator.

Alſo though a Teſtament by writing be not ſealed with the ſeale of the teſtator, yet is the teſtament good and effectuall in the law.

And ye ſhall alſo marke, that where a man maketh once his Teſtament and will, and afterward maketh an other will by words, if his laſt will be prooued before the Ordinarie, and by him put in writing, and inſealed with his ſeale, ſuch laſt will ſhall auoyd the firſt will, vnleſſe it be in ſpeciall caſes. And ſo alwayes the latter will and Teſtament ſhall auoyd the former.

Finally, by an act made the xxj. yeare of king Henry the eight, it was ordayned, that where part of the Executors named in the Teſtament wherein any landes or tenements be willed to be ſolde by them, refuſe to take vpon them the adminiſtration, and the reſidue doe take the charge and adminiſtration vpon them, in this caſe all bargaines and ſales in the ſaid landes made onely by thoſe executors that tooke the adminiſtration of the teſtament vpon them, ſhould be as good and effectuall, as if all the reſidue of the executors ſo refuſing had ioyned in the making of the bargaine and ſale.

The

The difference betweene Executors and Administrators.

Chap. 44.

EXecutors is when a man maketh his testament and last will, and therein nameth the person which shall execute his Testament, then he that is so named, is his executor, & such an executor shall haue an action against euery debtor of his testator. And if the Executors haue assets, that is to say, sufficient in their hands, then shal euery one to whom the testator was in debt, haue action against the executor, if he haue an obligation or specialtie to shew. But in euery case where the testator might wage his law, there no action lyeth against the executor.

Assets in the hands of the executors.

Administrator is he, to whom the Ordinarie committeth the administration and bestowing of the goods of a dead man, for default of an executor. And actions shall lie against him, and for him as for an executor, and he shall be charged to the value of the goods of the dead, and not further, if it be not by his false plea, or for that he hath wasted the goods of the dead. But if the Administrators die, his executors be not Administrators, but it behoueth the Ordinary to commit an new administration. Howbeit if a stranger, I meane him that is neyther executour named in the Testament and last will, nor yet administrator appointed by the Ordinarie, will take the goods of the dead, and minister of his owne head and minde, without lawfull authoritie, this person shal be charged and sued as an executor, and not as an administrator in an action which is brought against him by any creditor. But if the Ordinarie make a letter ad

Executors of his owne wrong.

colligendum

colligendum bona defuncti, hee that hath ſuch a letter is not adminiſtrator, but the action lyeth in this caſe againſt the ordinarie, as well as if he tooke the goods by his owne hand, or by the hand of any other his ſeruant, by any other commaundement.

An act of the probate of Teſtaments, made An. 21. H. 8. Chap. 50.

NOthing ſhall be taken by any hauing authoritie to take probation, inſinuation, or approbation, of any Teſtament where the goods of the Teſtator, doe not amount aboue the value of C. s. except to the ſcribe for writing thereof vi. d. And for the Commiſſion of adminiſtration of the goods of any dying inteſtate, not being likewiſe aboue C. s. vj. d. Alſo none hauing power to take probate of Teſtaments, ſhall refuſe to approue Teſtaments being lawfully offered vnto them in writing with ware thereto affixed readie to be ſealed, ſo that they be lawfully proued before the ſame ordinary to be true. And when the goods of the teſtator doe amount aboue an C. s. and not exceede xl. li. none ſhall take for the probation, regiſtring, ſealing and writing of any ſuch Teſtament aboue iij. s. vj. d. whereof to bee to them that haue authoritie to take the probation, ij. s. vj. d. and the other xij. d. to the ſcribe for regiſtring.

And where the goodes amount aboue xl. li. then only v. s. to be taken, whereof to be to them that haue authoritie to take the probation ij. s. and vj. d. and the other ij. s. vj. d. to the ſcribe for

for the regiſtring, or els if hee refuſe that ii.s. vi. d. then hee to haue for euery x. lines euerie line containing in length x. inches a penne.

And they that haue authoritie as is aboueſaid, ſhall approue, inſinuate, ſeale and regiſter the teſtaments, and deliuer them ſealed with the ſeale of their Office to the executors for the ſumme aboueſaid, & that with conuenient ſpeed without any fruſtratorie delay.

And if any perſon die inteſtate, or the executors refuſe to proue the teſtament, then they hauing authority as is aboueſaid, ſhall graunt the adminiſtratiõ of the goods to the widow of the perſon deceaſed, or to the next of kin or to both after their diſcretion, taking ſuerty of them for the true adminiſtration of the goods and debts, which they ſhal be ſo authoriſed to miniſter. And where one or diuers claime the adminiſtration as next of kin, which bee egall in degree of kinred, or where any one perſon deſireth the adminiſtration as next of kin where in deede diuers perſons be in equal tie of kinred, then in anie ſuch caſe the ordinary ſhal be at liberty, to take one or mo making requeſt. And where diuers require the adminiſtration, or where but one or mo of them, & not all being in like degree make requeſt, thẽ the ordinary ſhal admit the widow, and him or them only making requeſt or any of them, taking nothing for the ſame, where the perſon diſceaſed died not worth C.s. And if he died worth C.s. & not aboue xl. l. then ii.s. vi. d. onely to be taken. And the executor or adminiſtrator calling to him the dettors two at the leaſt: or ſuch perſons to whom any legacie was

made

made, and if they refuse them, two next of kinne to the person deceased, and in their default, two other honest persons shall by their discretions make a true inuentory indented of al the goods, which persons swearing before the Bishop or his officers to be true, shall deliuer the one part thereof vnto them, and the other keepe himselfe. And none hauing authoritie to take probate of testaments vpon paine contayned in this Statute, which shall refuse to take any such inuentorie presented or rendred to them. Inuentorie of goods.

Prouided, if any person shall dispose or will by his testament any lands or hereditaments to be sold, that the money or profits of the same, be accounted for goods or cattels.

And they hauing ỹ authority abouesaid vpon the deliuery of the seale and signe of the testator, shall cause the same to be defaced & incontinent shall redeliuer to ỹ executor without any claime and if any require a copy of the testament, & inuentory, then they hauing authoritie of their ministers, shall without delay deliuer them a copy, taking therefore, or els for the registring of the same as before, or els for euery ten lines 1.d.

Prouided, that where they hauing authority as is abouesaid, haue vsed to take lesse for the probate of testaments or other thinges concerning the same, then is here specified, they shall take as they did before this act.

Now if any that haue authority to take probate of testaments or their ministers, doe attempt against this Act, they shall forfeit for euerie time to the partie grieued as much money as they shall take contrarie to this Acte. And ouer that

that x.li. the one halfe to the King, the other to the partie grieued, that will ſue by action of debt, bill, information or otherwiſe in any of ỹ kings courts, wherein no eſſoin, protection nor wager of the law ſhall be allowed. And euery of them ſhalbe charged for himſelfe and for none other.

Prouided, that euery one hauing authoritie aboueſaid, may call before them euery perſon ſo named executors, to the intent to proue and refuſe the Teſtament, and to bring inuentories and to doe euery other thing concerning ỹ ſame as they might before this act, ſo neither they nor their miniſters ſhall take aboue the fees limited by this act.

How lands and tenements may be by teſtament or otherwiſe diſpoſed, enacted An.xxxij. H.viij.

EVery perſon hauing lands or other hereditamẽts holden in ſocage or of the nature of ſocage tenure in chiefe, and not hauing any lands or hereditaments holden of the King by Knights ſeruice, or ſocage tenure in chiefe, or of the nature of ſocage tenure in chiefe, nor yet of any other perſon by Knights ſeruice, may giue, diſpoſe, and deuiſe aſwell by Teſtament in writing, as otherwiſe by an act lawfully executed in his life, all his ſaid landes or hereditaments or any of them.

And euery perſon hauing lands or other hereditaments holden of the King in Socage or of the nature of ſocage tenure in chiefe, and hauing alſo any other lands or hereditamẽts holden of anie other perſon in Socage or of the nature

ture of ſocage tenure, and not hauing any hereditaments holden of the king, or of any other by knighes ſeruice, may from the ſaid time giue & deuiſe, aſwell by teſtament in writing, as otherwiſe by any act lawfully executed in his life, all and euery of them at his pleaſure: ſauing to the king all his right of primer ſeiſin and reliefes, and alſo all other rights and dueties for tenure in ſocage, or of the nature of ſocage tenure in chiefe, as heretofore hath been accuſtomed, the ſame to bee taken and ſued out of the kinges handes by the perſon to whom any ſuch landes ſhall be diſpoſed or deuiſed, in like maner as hath been vſed by any heire or heires before the making of this ſtatute. And ſauing and reſeruing alſo fines for alienations of ſuch lands & hereditaments holden of the king in ſocage, or of the nature of ſocage tenure in chiefe, whereof ſhal be any alteration of freehold or inheritance, made by will or otherwiſe, as is aforeſaid. Primer ſeiſin. Reliefes.

Item all perſons hauing lands or other hereditaments of eſtate of inheritance holden of the king in chiefe by knights ſeruice, or of the nature of knights ſeruice in chiefe, may giue, will, or aſſigne, two parts of the ſame, in three parts to be deuided, or elſe as much thereof as ſhall amount to the yearely value of two parts of the ſame, in three parts to be deuided in certaintie and by ſpeciall deuiſions, as it may be knowen in ſeuerality, for the aduancement of his wife, preferment of his children, and payment of his debtes, or otherwiſe at his pleaſure. Hauing to the king aſwell the wardſhip & primer ſeiſin of as much as ſhal amount to the clere yerely value

of

the third part thereof, without diminution, dower, fraud, couin, charge, or abridgement thereof, as alſo all fines for alienations of all ſuch landes holde of him by knightes ſeruice in chiefe, whereof ſhall be any alteration of freehold, or of inheritance made by will, or otherwiſe. And euery perſon hauing landes or tenements of eſtate of inheritance holden of the king in chiefe by knightes ſeruice, and other landes holden of him, or by any other by knightes ſeruice, or otherwiſe, may giue or aſſigne by his teſtament, or otherwiſe as is aforeſaid, two parts thereof, in three parts to be deuided, or elſe as much therof as ſhall extend to the yerely value of two parts, or be deuided in certainty. Sauing to the king, aſwell the wardſhip & primer ſeiſin of as much as ſhall amount to the yeerely value of the third part, without diminution, &c. As alſo for all fines for alienation, as is aboueſaid.

Fines for alienation.

Item euery perſon holding landes or tenements onely, of any other then the king by knightes ſeruice, and other lands and tenements in ſocage, or of the nature of ſocage tenure, may giue, diſpoſe, or aſſure by teſtament, or otherwiſe, two parts thereof holden by knightes ſeruice, as much as ſhall amount to the full yeerely value of two parts, and alſo all the landes and tenements holden by ſocage, or of the nature of ſocage tenure at his pleaſure. Sauing to the Lord of the landes and tenements holden by knightes ſeruice for his wardſhip, as much therfore as ſhall amount to the cleare yeerely value of the third part, without diminution, &c.

And euery perſon holding onely of the king by

by knights ſeruice, but not in chiefe, and alſo other hereditaments of others by knights ſeruice, and holding alſo other hereditaments of any other perſon in ſocage, or of the nature of ſocage tenure, may giue and aſſure by his laſt will or otherwiſe, two parts of that is holden of the king by knights ſeruice, and two parts of that is holden of any other perſon by knights ſeruice, or as much of either of them as ſhall amount to the full yerely value of two parts, and alſo all his lands and tenements ſo holden in ſocage, or of the nature of ſocage tenure. Sauing alwell to the king the wardſhip of as much as ſhall extend to the cleere yeerely value of the third part of the ſame ſo holden of him by knights ſeruice, without diminution, &c. Ita alſo to the Lordes of whom any of the ſaid lands been holden by knights ſeruice for the wardſhip as much of the ſame as ſhall amount to the cleere yearely value of the third part, in maner aboue declared. And if that third part which in any of the caſes abouenaid, ſhall come to the king, do not amount to the cleere yearely value of the full fourth part of all the ſaid hereditaments, whereof the king ſhall be intitled to haue the cuſtodie or primer ſeiſin: then the king may take into his handes as much of the other two parts of the ſaid hereditaments, as with that of the ſame hereditaments remayning in his handes, ſhall make vp the cleere yearely value of the third part thereof ſo to be had to him in title of wardſhip and primer ſeiſin. And like beneſite to be giuen to euery Lord, of whom any ſuch hereditament ſhall be holden by knights ſeruice, concerning

onely his third part for title of wardship.

Also all persons shall sue their liueries for possessions, reuersions, or remainders, and also pay reliefes, & heriots, like as they should haue done before the making thereof. And fines for alienation shal be paied in the Chauncery vpon writs of Entre in the post to be obtayned there, for common recoueries to bee suffered of any lands holden of the king in chiefe, in like maner as is vsed vpon alienations of landes so holden in chiefe by fine or feoffement.

Prouided, that in such cases where fines for alienation shall be payed in the Chauncerie for writs of Entre in the post as is aforesaid, none other fine shal be payd there for any such writs.

Item where two or more persons hold of the king by knights seruice toyntly to them, and to the heires of one of them, and he that hath the inheritance thereof dyeth, his heires being within age, the king shall haue the warde and mariage of the bodie of such heire, the like of the freeholder or freeholders of the lands so holden by knights seruice notwithstanding.

Sauing to all women such right and title of dower as they ought to haue of any landes or tenements to be assigned vnto them out of the two parts of the said lands or tenements seuered from the third part, as is aboue said, and not otherwise. And sauing also to the king the reuersion of all such tenements in ioinsture, and dower, immediatly after the death of such tenant, if they shall happen to die, during the nonage of the kings wardes.

Of

An. 32. H. 8.

IT is enacted, that from the first day of July in the yeere of our Lord 1540. all Marriages within this Church of England, contracted betweene lawfull persons, as by this act we declare, all persons to be lawfull that bee not prohibited by Gods law to marrie, such marriages, being contract and solemnized in the face of the Church, & consummate with bodily knowledge of fruit of children, or childe being had therein betweene the parties so married, shall be deemed and taken to be lawfull, good and indissoluble, notwithstanding any precontract of matrimony not cõsummate with bodily knowledge eyther of the persons so married, or both shall haue made with any other before the time of cõtracting that marriage which is solemnized and consummate, or whereof such fruit is ensued or may ensue as afore, and notwithstanding anie dispensation, prescription, law, or other thing graunted or confirmed by act or otherwise. And that no reuersion or prohibition (Gods law except) shall trouble, impeach any marriage without leuiticall degrees. And that no person shall after the said first day of July aforesaid, bee admitted to any of the spiritual courts, within this the Kinges realme, or any his other lands and dominions to any proces, plee, or allegation contrarie to this act.

FINIS.

This Table doth readily ſhew

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